



# CONSTITUENT ASSEMBLY OF PAKISTAN DEBATES

Monday, the 16th April, 1951

## OFFICIAL REPORT

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## CONSTITUENT ASSEMBLY OF PAKISTAN

*Monday, the 16th April, 1951*

The Constituent Assembly of Pakistan met in the Assembly Chamber, Karachi, at Eleven of the Clock on Monday, Mr. President (The Honourable Mr. Tamizuddin Khan) in the Chair.

### THE DELIMITATION OF CONSTITUENCIES (ADULT FRANCHISE) BILL

**The Honourable Pirzada Abdus Sattar Abdur Rahman** (Sind : Muslim) : Sir, I beg to introduce the Bill to provide for the delimitation of territorial constituencies in certain provinces of Pakistan.

*(After a pause.)*

**The Honourable Pirzada Abdus Sattar Abdur Rahman** : Sir, I move :

“That the Bill to provide for the delimitation of territorial constituencies in certain Provinces of Pakistan be taken into consideration.”

This is in consequence of adult franchise having been extended to the provinces where elections to the Legislative Assemblies of those provinces are due. As you are aware, Sir, the number of seats has been enlarged in the case of the North-West Frontier Province and also in the case of Sind where elections are due. Since this is the first election after the introduction of adult franchise, the Central Government are taking powers to appoint Delimitation Committees only for those provinces where it has become necessary for the purposes of first elections under adult franchise. The whole Bill before this Honourable House lays down the scheme by which the delimitation of the constituencies will take place. In the first instance, the Central Government will appoint a Delimitation Committee which will go into the question and after they have framed their proposals, they will publish all those results. They will then invite objections from the public within 15 days as is contemplated under the Bill. After the objections have been received, they will be considered by the Committee again and, if necessary, they will vary their decisions and their findings and then submit their final report to the Central Government. The Central Government will then consider the report and the objections and other materials including the evidence that were produced before the Committee and then take a final decision as to the delimitation of the constituencies. When the Central Government have so decided, the Governor-General of Pakistan has been given powers under this Bill to amend the Pakistan Legislative Assembly Order, which was the Act passed by the British Parliament at the time of the delimitation of the constituencies previously. That Act will be amended by the Governor-General of Pakistan in accordance with the decision of the Central Government.

This is the scheme of the Bill. I might add one thing more. This Bill will apply only to the first elections under the adult franchise, and the powers of the Provincial Governments under section 291, which are the residuary with respect to the delimitation practices and several other matters, will remain intact as they are. After the first elections have taken place, those powers can be exercised by the provinces as they are. Therefore, there is no constitutional change ; only power has been taken for the purposes of the first elections.



**Mr. President :** The question is :

"That the Bill to provide for the delimitation of territorial constituencies in certain Provinces of Pakistan be taken into consideration."

The motion was adopted.

**Mr. President :** We now take up the Bill clause by clause.

**Shri Dharendra Nath Datta** (East Bengal : General) : Mr. President, Sir, I move :

"That in sub-clause (2) of clause 2 of the Bill, after the word 'Government' occurring in the second line, the following be inserted :

'in consultation with the Government of the Province for which it was appointed.'"

May I, with your permission, also move my next amendment ?

**Mr. President :** Yes.

**Shri Dharendra Nath Dutta :** Sir, I move :

"That to sub-clause (2) of clause 2 of the Bill, the following be added at the end :

'Three members of the Committee shall be appointed from the Province for which it was appointed.'"

What I mean by my first amendment is this. Clause 2 deals with the delimitation of the constituencies and sub-clause (2) of clause 2 authorises the Central Government to appoint a Committee for the purpose of delimiting the constituencies. Sub-clause (2) says that 'the Committee shall be appointed by the Central Government'. What I propose by my amendment is that this Committee shall be appointed by the Central Government in consultation with the Government of the province for which it was appointed. My submission before you and before the House is this that, really speaking, it is the Provincial Government which is in a position to help the Central Government in the matter of the delimitation of the constituencies and these constituencies are delimited for the purpose of the provincial elections. Therefore, I submit that the Committees that shall be appointed should be appointed in consultation with the Government of the province for which it was appointed.

Then, Sir, by means of my second amendment I say this. You will observe that sub-clause (2) runs as follows :

"The Committee shall be appointed by the Central Government and shall consist of a Chairman, and such number of other members, but not exceeding four, as the Central Government by order determine."

That is to say, the maximum number of members of the Committee shall be five including the Chairman. As these Committees are appointed for the purpose of delimiting the constituencies, I submit three members of these Committees shall be appointed from the province for which they are intended. If members are so appointed, they will be in a position to help the Central Government in delimiting the constituencies.

With these words I move my amendments and I hope they will be accepted by the House.

**Mr. President :** Amendments moved :

"That in sub-clause (2) of clause 2 of the Bill, after the word 'Government' occurring in the second line, the following be inserted :—

'in consultation with the Government of the Province for which it was appointed.'"

**Sardar Asadullah Jan Khan** (N.-W.F.P. : Muslim) : Sir, I rise to oppose the amendment moved by the Honourable Member. There is a very sane proverb among the Italian people that "guardians are appointed to guarantee liberty against the lawless ; but who shall guarantee liberty against the guardians ?" The same is true of some Provincial Governments in the Federation of Pakistan.

For instance, Mr. President, in my own province—in the North-West Frontier Province—owing to the death of Malik Akbar Ali Khan of Sakori village, in the Bannu district, a seat fell vacant in the provincial Assembly. Shah Daraz Khan, son of the deceased M.L.A., was put into the saddle by the provincial government.

**The Honourable Pirzada Abdus Sattar Abdur Rahman** : Point of order, Sir. The amendment is with regard to consulting the provinces with regard to the appointment of members. It is not that the provincial governments should be given powers of delimitation, and my friend is arguing as if the amendment seeks to give powers of delimitation to the provincial governments ; that is not the intention of the amendment. The amendment only asks that the provincial governments should be consulted. So all that he says is out of order.

**Sardar Asadullah Jan Khan** : It is right, Sir.

**Mr. President** : Then please keep to the point.

**Sardar Asadullah Jan Khan** : Sir, what I mean to say is that the Delimitation Committee must be appointed by the Centre and that no member on the Committee should be taken from the province in which the Delimitation Committee is appointed.

Sir, I was going to narrate some facts which throw light on how these democratic institutions are robbed of their life by turning them into a handmaid, a tool, of the provincial governments. Therefore, Sir, if you allow me I will give two instances on this point and if it is irrelevant then I will resume my seat.

Sir, I was saying that Shah Daraz Khan was put into the saddle by the provincial government without going into the preliminary essential conditions which were made obligatory by the law and the rules.

**Mr. President** : As has been pointed out, this is not quite relevant but you have made your point. Your point is that if the provincial Government is consulted, the provincial Government is not likely to give sound advice. That is your point ?

**Sardar Asadullah Jan Khan** : Yes, Sir, that everything should be taken over by the Centre so far as delimitation is concerned and everything must be decided on the spot there in that constituency. That is what I want to say, Sir.

**The Honourable Pirzada Abdus Sattar Abdur Rahman** : Sir, I am grateful to the last speaker for after all reposing so much confidence in the Central Government, but better late than never ! I am opposing these amendments but not for the reasons that have been given by the last speaker. It is not necessary in an enactment like this to provide that the provincial Governments shall be consulted. I suppose the House can leave that to the Central Government. If they consider it necessary in any matter concerning a province to consult them they will do so, and if they do not consider it necessary they will not do so, but to provide such a thing in a Constituent Assembly legislation I do not think is desirable.

[The Honourable Pirzada Abdus Sattar Abdur Rahman.]

Similar remarks apply to the restriction that three members of the Committee should necessarily be from the province. Ordinarily we may appoint only three because five is the maximum number. Therefore both amendments being unnecessary I oppose them.

**Mr. President :** The question is :

"That in sub-clause (2) of clause 2 of the Bill after the word 'Government' occurring in the second line, the following be inserted :—

'in consultation with the Government of the Province for which it was appointed.'"

The motion was negatived.

**Mr. President :** The question is :

"That to sub-clause (2) of clause 2 of the Bill, the following be added at the end :—

'Three members of the Committee shall be appointed from the Province for which it was appointed.'"

The motion was negatived.

**Mr. President :** The question is :

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clauses 3, 4 and 5 were added to the Bill.

**Shri Dharendra Nath Dutta :** I move, Sir.

"That in clause 6 of the Bill, for the word 'fifteen' occurring in the fifth line, the word 'thirty' be substituted."

**Mr. President, Sir,** it is said that after the Committee is appointed there shall be a preliminary report by the Committee and it is further said that the preliminary report of the Committee shall be published and that invitation for the suggestions will be issued.

Then, Sir, it is said :—

"6. The notification and other notices shall be issued on the same day and shall inform the public that the Committee will take into consideration any objection or suggestion relating to its tentative proposals which may be received within *fifteen* days of the date of the notification by the Secretary of the Committee concerned."

I submit, Sir, that this is a very short period. If the suggestions are to be accepted, then at least a period sufficient for the people to read the preliminary report and submit the reports should be given. Sir, I submit that instead of fifteen days it should be thirty days and therefore for the word "fifteen" I want to substitute the word "thirty". With these words, Sir, I move the motion for the acceptance of the House.

**Mr. President :** Amendment moved :

"That in clause 6 of the Bill, for the word 'fifteen' occurring in the first line, the word 'thirty' be substituted."

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** Sir, I had provided fifteen days in the interests of the expeditious disposal of the work of the Committee but if the Members are of the view that thirty days would be better I have no objection and I accept the amendment.

**Mr. President :** The question is :

"That in clause 6 of the Bill, for the word 'fifteen' occurring in the first line, the word 'thirty' be substituted."

The motion was adopted.

**Mr. President :** The question is :

"That clause 6, as amended, stand part of the Bill."

The motion was adopted.

Clause 6, as amended, was added to the Bill.

**Shri Dharendra Nath Dutta :** Sir, I beg to move :

"That in clause 7 of the Bill, for the word 'fifteen' occurring in the first line, the word 'thirty' be substituted."

Sir, this is consequential because if thirty days are allowed for consideration then here also the period should be changed from "fifteen" to "thirty" days and I propose that instead of "fifteen" the word "thirty" shall be substituted. This is only a consequential change and I hope the House will accept this amendment.

**Mr. President :** Amendment moved :

"That in clause 7 of the Bill, for the word 'fifteen' occurring in the first line, the word 'thirty' be substituted."

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** This is a consequential amendment and I accept it.

**Mr. President :** The question is :

"That in clause 7 of the Bill, for the word 'fifteen' occurring in the first line, the word 'thirty' be substituted."

The motion was adopted.

**Mr. President :** The question is :

"That clause 7, as amended, stand part of the Bill."

The motion was adopted.

Clause 7, as amended, was added to the Bill.

**Shri Dharendra Nath Dutta :** Sir, I move :

"That in clause 8 of the Bill, after the word 'Committee' occurring in the fourth line, the following be inserted :—

'and after consulting the Government of the Province for which it was appointed.'"

Sir, clause 8 of the Bill deals with the consideration of the final report. The clause reads :—

"8. The Central Government shall have power after due consideration of the final report of the Committee, and of any matter placed or evidence led before the Committee, to make such amendments and modifications as it thinks fit in the schemes of delimitation proposed by the Committee."

That is finally accepting the report of the Committee. I submit, Sir, that this should be done at least after consultation with the Government of the Province for which it was appointed. I think, Sir, this is necessary at least. When the Committee was appointed, consultation may not be deemed necessary, but when the report is accepted consultation with the Provincial Government for which it was appointed may become necessary. I move this motion for the acceptance of the House.

**Mr. President :** Amendment moved :

"That in clause 8 of the Bill, after the word 'Committee' occurring in the fourth line, the following be inserted :—

'and after consulting the Government of the Province for which it was appointed.'"

Is this opposed ?

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** My objection on principle is the same as in case of an earlier amendment, and moreover in addition to the remarks that I made at that time clause 8 provides that all the objections that have been raised before the Committee will be considered by the Central Government. The objections sent by the Provincial Government will be before the Central Government at the time of considering the report. For these reasons I oppose the amendment.

**Mr. President :** The question is :

"That in clause 8 of the Bill, after the word 'Committee' occurring in the fourth line, the following be inserted :—

'and after consulting the Government of the Province for which it was appointed.'"

The motion was negatived.

**Mr. President :** The question is :

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Clause 9 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** Sir, I beg to move :

"That the Bill, as amended, be passed."

**Mr. President :** The question is :

"That the Bill, as amended, be passed."

The motion was adopted.

#### THE RAWALPINDI CONSPIRACY (SPECIAL TRIBUNAL) BILL.\*

**Mr. President :** The Honourable Mr. Pirzada.

**Shri Dharendra Nath Dutta** (East Bengal : General) : May I rise on a point of order now after the motion is moved for consideration.

**Mr. President :** You may raise the point of order as he is about to move the motion.†

**The Honourable Pirzada Abdus Sattar Abdur Rahman** (Sind : Muslim) : This is the proper time to raise the point as the motion is before the House. He can go straightaway and raise his objection now.

This is the proper time to raise the point as the motion is before the House. He can go straightaway and raise his objection now.

**Shri Dharendra Nath Dutta :** I rise on a point of order. I submit that this Bill should have been introduced in the Constituent Assembly (Legislature) or the Federal Legislature and not here before the constitution-making body. It is clear, Sir, if you refer to rule 42 of the Constituent Assembly of Pakistan Procedure Rules, the procedure with regard to legislation for making provision as to the constitution of the Dominion or for amending the Government of India Act, 1935 "shall be the same as that of the Bill". Rule 42 is the No. of rule. From this rule it is clear that a Bill may be introduced in the Constituent Assembly

\* Introduced in the Constituent Assembly of Pakistan on the 13th April, 1951, vide C. A. P. Debates, dated 13th April, 1951, Vol. IX, No. 3, page 43.

† "That the Bill to provide for the setting up of the special Tribunal to try the Rawalpindi Conspiracy Case be taken into consideration."—vide page 43 *infra*.

for the purpose of making the constitution, for the purpose of amending the Independence Act and for the purpose of amending the Government of India Act, 1935, as adapted in Pakistan because the Government of India Act is the only Act which guides us. If you want to make any amendment then the Bill shall have to be introduced in the Constituent Assembly for the purpose of amending the Government of India Act or for making constitution or amending the Independence Act. If you look to the terms of the Bill that has been introduced, you will find that it is a Bill to provide for the setting up of Special Tribunal to try a certain case—the Rawalpindi Conspiracy case. This Bill if you look to the terms of the various provisions in it and the procedure laid down in rules of procedure, is not meant with the object of amending any sections of the Government of India Act, 1935, or with the object of amending the Independence Act or for the purpose of constitution-making. It is said that a Special Tribunal will be set up for the trial of a certain case and the procedure is given as to how the trial shall have to be conducted. If you look at clause 4 it says :

“The Special Tribunal shall have in relation to the proceedings in the said case all the powers of a High Court in relation to criminal trials including the power of punishing for contempts and shall follow in all respects the procedure provided for trials before High Courts in the Code of Criminal Procedure, 1898, except as hereinafter provided, namely so and so ; so and so.”

So, Sir, by section 4 it is laid down that the Special Tribunal shall follow the procedure as embodied in the Criminal Procedure Code except as those provided in (a), (b) and (c), etc. So, really it is for amending the Code of Criminal Procedure that this Bill has been brought forward. Then, Sir, clause 5 deals with the jurisdiction of the Special Tribunal. Then you will find, Sir, clause 6 also deals with where the Special Tribunal shall sit and at what time. Then, Sir, clause 7 puts a restriction on adjournment. That is again to a certain extent amending the Criminal Procedure Code. Then, Sir, special rule of evidence has been laid down. Sub-clause (1) of clause 8 lays down that any statement recorded by a magistrate made by a person who, at the time of trial is dead, may be accepted as evidence by the Special Tribunal. So clause 8 amends certain provisions of the Evidence Act. Sub-section (2) says :

“Notwithstanding anything contained in the Evidence Act, 1872, or in the Code of Criminal Procedure, 1898, the Special Tribunal may receive in evidence, for such purposes as it may think fit, any statement recorded in the course of the investigation of the said case by a police officer, made by any person who is examined at the trial whether as a witness or as an accused person.”

Mr. President, you are aware the statement made before the police by any person cannot be taken as evidence under certain instructions of the Code of Criminal Procedure. So, Sir, clause 8 deals with certain provisions of the Evidence Act or the Code of Criminal Procedure. Then, Sir, clause 9 lays down that the Special Tribunal, after hearing . . .

**Mr. President :** Mr. Dutta, you need not examine every clause of the Bill in raising the point of order.

**Shri Dharendra Nath Dutta :** I am referring to all the clauses of the Bill to show that no clause deals with amending of the Government of India Act or any section of the Independence Act. If at all it deals with anything it deals with the amendment of the Code of Criminal Procedure and certain sections of the Evidence Act. Therefore if you refer to the other clauses you will find that it does not amend any sections of the Government of India Act . . . . .

**An Honourable Member :** It amends the Army Act.

**Shri Dharendra Nath Dutta :** Even if it amends certain sections of the Army Act it does not mean amending the Government of India Act, 1935. I am thankful to my friend to remind me that it deals with amendment of certain instructions under the Army Act. But amending the Army Act does not mean amendment of Government of India Act, 1935. Sir, this Bill can be introduced only if it seeks to amend certain sections of the Government of India Act or certain sections of the Indian Independence Act, or it has something to do with the framing of our constitution.

As you know, Sir, there are, so far as the Government of India Act, 1935, is concerned, three lists in the Seventh Schedule. Firstly, it deals with Federal Legislative List, secondly, it deals with the Provincial Legislative List and thirdly, it deals with the Concurrent Legislative List. You will find in the first part, item No. 1 of the Concurrent List—the criminal law, including all matters included in the Penal Code. Then, Sir, item No. 2 in the same list is Criminal Procedure, including all matters included in the Code of the Criminal Procedure. So, under the Government of India Act, 1935, the Federal Legislature has power to make laws for the purpose of amending the Criminal Procedure Code and for the purpose of amending any criminal law whatsoever in the Concurrent Legislative List. Then item No. 5 is about evidence on oath, recognition of laws, public acts and records in judicial proceedings. Item No. 5 gives power to the Federal Legislature under the Concurrent Legislative List, Seventh Schedule, to make any provision or any law regarding evidence and records of judicial proceedings. You will also find that the Federal Legislature has got the power to make laws under the Criminal Procedure Code and to amend the Evidence Act or other Acts.

Moreover, if you refer to section 104 of the Government of India which occurs in the Legislative powers of the Federal Legislature, regarding residual powers, you will find that anything which is not enumerated in either List No. 1 or List No. 2 or List No. 3, for that residual powers have been given to the Federal Legislature. The Governor-General may by a public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in the Lists referred to.

**Mr. President :** What is the use of reading all this ? We know what is contained in the Government of India Act.

**Shri Dharendra Nath Dutta :** You know, Sir, but all the Members of the House do not know.

**Mr. President :** At this stage you are making a submission to the Chair only.

**Shri Dharendra Nath Dutta :** Yes, Sir.

**The Honourable Mr. Liaquat Ali Khan (Leader of the House) :** And the Chair knows the Government of India Act.

**Shri Dharendra Nath Dutta :** Sir, you know it, but I thought it was better to enumerate what is the point of order raised.

I was submitting, Sir, under section 104 of the Government of India Act—residual powers of the Legislature—that really the Federal Legislature is the only body which can make any laws with respect to Criminal Procedure Code or with respect to Evidence Act or with respect to Army Act or other Acts if it is sought to amend any provisions of the Act. But the Constituent Assembly can always make laws if they seek to amend the Government of India Act, 1935, and if they seek to amend the Independence Act or if they seek to frame any constitution for our country.

So, I submit that this piece of legislation shall be introduced in the Federal Legislature and not introduced in the Constituent Assembly of Pakistan. With these few words I resume my seat.

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** I am grateful to the Honourable Member for trying to guide me properly and trying to give me an advice that there may be a danger in bringing this legislation before the Constituent Assembly and that I might take it to the Legislative Assembly, but I do not think that the Honourable Member could be so ignorant of law and the constitutional position as to raise this point, except that his object of guiding me was to misguide me.

The Honourable Member has referred only to the Indian Independence Act, section 8. I presume he refers to sub-section (1) of section 8. I would read it to him for his benefit. It says : "In the case of each of the new Dominions the powers of the Legislature of the Dominion shall for the purpose of making provisions as to the Constitution of the Dominion be exercised, in the first instance, by the Constituent Assembly of that Dominion. Now this sub-section (1) confers on the Constituent Assembly powers of making Constitution, as he has said so.

Then sub-section (e) of sub-section (2) of the same Section says :

"The powers of the Federal Legislature or Indian Legislature under the Act as enforced in relation to each Dominion shall, in the first instance, be exercisable by the Constituent Assembly of the Dominion, in addition to the powers exercisable by that Assembly in sub-section (1) of this section."

Therefore, Sir, he himself has argued that sub-section (1) gives powers of making constitution and sub-section (e) provides the mode by which the powers of the Federal Legislature may be exercised. But Mr. Dutta seems to have forgotten that we are an independent country. The powers of legislation exercised by the Federal Legislature were very limited and the powers which that Assembly did not possess at that time were exercised by the Parliament and they legislated in matters in which the Federal Legislature had no power, for instance, extra-territorial legislation amending the Acts of the British Parliament which are not constitutional, but legislative only. But these powers were limited to British Power only and His Majesty, and they were exercised whenever they were thought necessary. He has conveniently forgotten section 6 of the Independence Act which gives all those powers of legislation that were enjoyed by the Parliament to the Constituent Assembly. Therefore, the Constituent Assembly can legislate not only with regard to the powers of the Federal Legislature but other powers of legislation which the Federal Legislative Assembly cannot exercise. Now, those powers of legislation, if he were to read section 6, will very clearly seem to have been given to the Constituent Assembly. I will read, for his benefit, section 6, which says :

"The Legislature of each of the new dominions shall have full power to make laws for that dominion, including laws having extra-territorial operation."

But he has probably either not read it or deliberately not quoted this section. This section deals with the powers of the Constituent Assembly. It says :

"That it shall have full power to make all laws for that Dominion."

Any law you can make, because it is a sovereign body. It has also expressly said : "..... including laws having extra-territorial operation,"



[The Honourable Pirzada Abdus Sattar Abdur Rahman.]

Then, Sir, sub-section (2) of the same section 6 says : No law or provision of any law made by the Legislature of either of the new dominions shall be void or inoperative on the ground that it is repugnant to the . . . . . of any legislation or to the provision of this or any existing or future laws of Parliament of the United Kingdom or to any order, rule or regulation made under any such Act and the powers of the Legislature of each Dominion shall include the power to repeal, or amend any such Act, order, rule or regulation in so far as it pertains to that Legislature. So far it has given powers expressly that the Constituent Assembly will legislate to set aside any legislative measure that the British Parliament may have passed, which power our Federal Legislature does not possess.

Now I go further and refer him to section 6 to show how sovereign this Constituent Assembly is. It can even limit its own powers. It can amend any Act of the British Parliament. It can amend the Independence Act. It can legislate its own powers by legislating. Therefore, this is a sovereign body. It has got powers to legislate in any matters it likes. My friend has probably forgotten to refer to section 6, which deals with the powers of the Constituent Assembly.

With regard to the other points raised by him, he has very kindly gone through the whole Bill, and a man of his calibre and knowledge of law—I thought he had ample of it—could not have gone through this Bill without coming across provisions which are not covered under the powers of the Federal Legislature in any of the lists—one or three—and coming within the powers given to the Constituent Assembly under section 6 (1) (2) of the Independence Act alone. I think he has conveniently skipped over clause 5 ; when he was considering it he did not read those words at all. Probably it did not occur to him or it may be have been avoided for other reasons. The Special Tribunal will have jurisdiction wherever the offence may have been committed. I suppose the meanings of these words are very clear—"wherever it may have been committed." It means within Pakistan or outside Pakistan and this confers extra-territorial jurisdiction to the Tribunal and therefore, within the meaning of section 6 (1) of the Indian Independence Act. It is only the Constituent Assembly and not Federal Legislature which could legislate. Therefore, not to give these powers, I think, will be rendering the Tribunal ineffective. I do not know how a lawyer like him could have missed a point like this. Then, Sir, within the same section there is a reference to the Army Act, 1881, and I have given the description of this Act. It says : 44-45 of Queen Victoria's reign. That means that the Act is of the British Parliament. Has the Federal Legislature got that power to amend the Act of 1881 ? The Army Act provides that the trial will be only by a court-martial and by no other court and here we are conferring jurisdiction upon this Tribunal to try all these cases whether there is provision or not. We are amending the Army Act of 1881. How could that be done by ordinary Legislative Assembly ?

Then, Sir, we proceed further ; he skipped another very important section which is section 10 which takes away power of appeal of all courts in the matter of the Federal Court. I do not think the memory of my honourable friend could be so short as to have forgotten the recent Act that was passed by the Constituent Assembly conferring powers of appeal that were enjoyed originally by the Privy Council on to the Federal Court. Now, Federal Court exercises powers of two kinds : one is granted to it by statute, which is more limited ; another is prerogative of

the Crown, and he would remember that these special powers of the prerogative of the Crown which are non-statutory, were conferred by the Act of this Constituent Assembly on the Federal Court. Can the Federal Legislature take away a power conferred by the Constituent Assembly on the Federal Court? Certainly not. Therefore, it is necessary for this Constituent Assembly to pass another law divesting the Federal Court of responsibility to this particular tribunal. Therefore, it appears quite clear and I do not know how my honourable friend could have escaped the point, that this has been provided by the Indian Independence Act. There is no doubt that the Constituent Assembly can legislate on this. Sir, it would be very hazardous to accept the kind of suggestion which Mr. Dutta has made.

**Mr. President :** I mostly agree with Pirzada regarding what he said in reply to Mr. Dutta. I do not like to refer to what Pirzada has already said but I would like to refer to Rule 42 which has been quoted by Mr. Dutta. Rule 42 runs :

“The procedure for making provision as to the Constitution of the Dominion or for amending the Indian Independence Act, and the Government of India Act, 1935, shall be the same as of a Bill.”

This rule prescribes the procedure of amending the Indian Independence Act and the Government of India Act and also for making the constitution of Pakistan. This does not preclude any jurisdiction. This rule does not say that no other matter can be dealt with according to the procedure of Bill. That is not so. Therefore, I think, Mr. Dutta misread the rule when he said that under this rule it is not permissible for the Constituent Assembly to deal with any other matter than the making of the Constitution and the amendment of the Indian Independence Act and of the Government of India Act under the procedure of Bills. Therefore, I think his objection is not valid and the Bill can be moved in the Constituent Assembly.

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** Sir, I beg to move :

“That the Bill to provide for the setting up of the Special Tribunal to try the Rawalpindi Conspiracy Case be taken into consideration.”

Sir, the necessity of this Bill is self-evident. We have got to provide a procedure how this important trial is to be conducted. Normal procedure for the conduct of a Sessions case, punishable with the highest punishment is that the case is challaned before a committing magistrate; the committing magistrate, after hearing the evidence, makes out a *prima facie* case and passes on the case to the High Court having jurisdiction. The Sessions Court or the High Court goes through the whole case again and after hearing the whole evidence gives the finding and then after the judgment has been delivered and the person is convicted, the case goes to the High Court where a Division Bench of two Judges, usually, sits and after examination, if it upholds the conviction, in certain matters by a special leave the accused can appeal to the Federal Court which has now the power of the Privy Council.

The House will agree that this is an offence which must be expeditiously tried and the offenders, if found guilty, must be punished as soon as possible. The nature of the offence is such. But at the same time we do not want to deny justice that is due to the accused persons at the time of standing their trials. So, what I have proposed is this—ultimately the accused goes to the High Court. The accused goes for appeal unrestricted to the Division Bench of a High Court. The committing

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magistrate is nobody. He simply commits the case. The findings have got to be confirmed and upheld by a Division Bench of the High Court. I have proposed that the power of trial should be given to the High Court straightaway which can exercise powers of sessions trial, but instead of having two judges I have provided for three judges—some of whom may be from High Court and some from the Federal Court so that I am giving a Division Bench straightaway. Usually there are only two judges. In such cases when there is a difference of opinion, a third judge has got to be appointed. Therefore, in order not to waste the time I am providing not for two judges but for three judges, so that even if there is difference of opinion between the two judges, the matter can be decided by the majority.

Sir, you will see that the accused will have the highest tribunal that can be given and the trial will also be conducted expeditiously and will be heard by High Court Judges who would have applied their mind at the time of appeal only—when they would not have got the benefit of hearing evidence in original. My lawyer friends must be knowing that in so many judgments in the High Court, Judges have felt difficulty and if they had been the trying courts, they would have been able to appreciate the evidence better than merely on paper. So, I have provided that these Judges will hear the original case and also this Bench of three Judges will sit and hear the case originally and decide. Since, the highest possible Tribunal is being appointed and even Judges from the Federal Court are on it to go through the cases, the right of appeal is being restricted. I have given them all the facilities, after all and I don't think that any question of right of appeal arises. These are the main features of my Bill, Sir. The object is expeditious disposal of the case and punishment to the accused persons awarded if they are found guilty of such a serious offence as that, as soon as possible and not interfering by way of revision and other matters. I am assuring them the highest court or tribunal and the highest judiciary.

With regard to the adjournment also, I have made provision that the High Court Judges may not adjourn the case as no question of transfer of the case arises when the highest Tribunal is there. Only the accused persons in order to delay the trial bring in such excuses. They fall ill, their counsel does not come or for several other reasons.

There is also a slight departure from the Evidence Act and the Criminal Procedure Code. I have left it to the Tribunal to admit any evidence irrespective of the Evidence Act and Criminal Procedure Code, for such limited purposes as they think it necessary.

Sir, these are the main features of my Bill and for all these reasons, I commend this for the acceptance of the House.

**Mr. President :** Motion moved :

“That the Bill to provide for the setting up of the Special Tribunal to try the Rawalpindi Conspiracy Case be taken into consideration.”

**Shri Sris Chandra Chattopadhyaya** (East Bengal : General) : Mr. President, this Bill is for making provision for the trial of Rawalpindi Case. It is a single case and so far as its merits or demerits, I do not wish to say anything as it is a *sub judice* case.

We have learnt from the statement of my esteemed friend, the Honourable Mr. Liaquat Ali Khan facts of this case, and if it is proved it is really a very serious matter and it has to be condemned by everybody

if anybody wants to subvert the existence of Pakistan or does anything against the stability of Pakistan. That is a different question. But, this Bill is introduced for the trial of the accused. Then, it is to be considered whether the procedure laid down here is for the interest of the accused persons or it is to the best interests of the prosecution only. That has to be considered. I am against special provisions or special Acts for trial of any person. I consider ordinary law is sufficient. I was against this, not today, but I was against this from 1910 up to 1942, so long as I was a practising lawyer.

Sir, you will find in the Bill that no adjournment is being provided and in support Mr. Pirzada says it is to avoid delaying tactics of the defence. But in my long experience I always found adjournment of the case being applied for by the prosecution and not by defence. This sort of argument we have always heard from the counsel for the prosecution. In my experience—long experience—about the special trials such as State trials and others, I had found that the delay was always caused by the prosecution. The application for adjournment always comes from the prosecution even when the argument stage was finished practically, but they wanted to bring further evidence. I have never found anywhere that the accused persons have asked for the adjournment of the case. I have acted as a defence pleader for a long period and I had had no such occasion.

Sir, so far as the composition of the Special Tribunal is concerned, I have no grudge against it. It will be very good that three Judges of the High Court or the Supreme Court will be there and I have no complaint against that provision. It is a very nice provision. During the British days, when they found that it was very difficult to have the accused convicted by the Special Judges of the High Court, they changed the composition of the Tribunal—instead of High Court Judges the composition was worse. This Special Tribunal consisting of the High Court Judges was first introduced by the Criminal Law (Amendment) Act (XIV of 1908) and I shall request my honourable friend, Mr. Pirzada, to look into that Act. You have tried to bring some of the provisions of that Act but you have left some provisions which are in the interest of the accused. Here you have provided that the accused persons will be charge-sheeted and placed for trial straightaway before the Tribunal without preliminary inquiry. The trial will be speedy and less expensive for the accused persons. You will find there is a provision in Act No. XIV of 1908, to supply copies of evidence to the accused. A provision ought to have been made in this Bill that copies of all evidence, all the statements which are in the possession of the prosecution or which the prosecution wishes to rely upon ought to be supplied to the accused persons. That provision I find is not in clause 3 of the Bill.

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** You mean before the trial ?

**Shri Sris Chandra Chattopadhyaya :** Before the trial when charge-sheeted. You will find that in Act XIV of 1908—it may be 1908 or 1909, I do not remember exactly. Then, from provision under clause 4, it seems as though it is only the prosecution which has got the right of reply. Sub-clause (b) says :

“Section 297 of the said Code shall be read as if it required the Special Tribunal, upon the case for the defence and the prosecutor's reply (if any), being concluded.”

Therefore, according to this, right of reply is given to the prosecution, but this is not according to the law. The right of reply depends upon the circumstances of the case. If defence witness is examined, then the prosecution has got the right of reply. If no

[Shri Sris Chandra Chattopadhyaya.]

witnesses are examined by the defence, then the defence has got the right of reply. But I find that this clause lays down a thing which is somewhat different. I find there is a similar provision of law when an inquiry is held against a public servant. There also the right of reply will be with the Government. Now, this is very objectionable and the right of reply should be decided according to the circumstances of the case.

A copy of the evidence recorded by the Tribunal should be supplied to the accused free of cost. There is no such provision. In my opinion they will experience some difficulty. Sir, this is practically a State trial. Therefore, you must at least show that this is a fair trial. I do not speak about justice. A court of law tries to arrive at a finality. That is the dictum sometimes used by Judges. The Judges often say: "We do not administer justice; we arrive at a finality". Trial must be fair.

Then, I come to clause 8. According to this clause, any statement made by any witness before a magistrate and not in the presence of the accused, can be made admissible in evidence. This means that the statements recorded under section 164 of the Criminal Procedure Code, may be received in evidence but according to the present law this is not admissible in evidence. Of course, it can be used for the purpose of contradiction only, but to use it in a case like this would be very pernicious. Though a personal matter I can tell you this that if such provision as in clause 8 of the Bill were accepted in 1917, I would have been hanged and would not have been here today. There were several charges against me made by the Police, such as, committing murders, throwing of bombs and so on. It was also said that but for me, the movement would not have lasted so long. So, if this sort of law was in force at that time, I would not have been here today.

**The Honourable Mr. Liaquat Ali Khan :** Were all those charges false ?

**Shri Sris Chandra Chattopadhyaya :** Certainly : and that I can say most definitely. I only fought for the freedom of my country from the foreign rule. I only wanted to drive away the Britishers and I said this even to the Governor. I told him that I want to drive you out and not with the help of others as they accused me. This was a false statement. Therefore, this is a pernicious thing and it is very objectionable that an evidence which is not tested by cross-examination should be accepted in evidence.

The next sub-clause of clause 8 says that the police statement is to be admitted. If you look into the records of the Calcutta High Court, you will find that they record evidence as it suits them. I have always maintained that the police papers cannot be relied upon because they can write anything they like. They may put anything in the mouth of the witness in order to strengthen their case and make it believable. Once a Public Prosecutor handed over a bundle of papers against my client, who was a student. I told the Judge those papers were prepared for the purpose of opposing the bail petition only. I protested that they should not come before any court of law. My client was released on bail and the next day he was discharged. Therefore, I also object to this portion of clause 8 and maintain that the police papers should not be accepted in evidence because they are not reliable at all.

Then, Sir, a provision has been made in clause 12 about the selection of an Advocate. This provision is a very good one. If the accused cannot engage a lawyer, Government can provide him with a lawyer and should bear his expenses. That provision was made in India also for the

undefended cases. This is a State trial and my submission is that the lawyer should be selected by the accused persons. Formerly, they used to send a lawyer to defend the accused out of a panel which was created by the District Magistrate. This was objected to, and this objection was considered reasonable even by some District and Sessions Judges. The provision that you have made here is better than the former one to which I have alluded but my submission is that it must be the accused who should select his lawyer. That is a provision which has been adhered to in a number of trials in England.

**The Honourable Mr. Nurul Amin** (East Bengal : Muslim) : Is there any bar in engaging the Leader of the Opposition for the accused ?

**Shri Sris Chandra Chattopadhyaya** : I have given up my practice for good.

I made an inquiry about the position in England. In England an accused person has the right to select his counsel and you will find that on State trials the best counsel defend the accused. I got a suspicion as to how these people could engage such best counsel. I made an inquiry and was informed that there is a code of honour—the Bar Code of Honour—that the accused can ask any counsel to defend him and the counsel will defend him. He will have to do that. That is their code of honour.

In Bengal also, my experience is that an accused names any lawyer and that lawyer is in honour bound to defend him.

**The Honourable Mr. Liaquat Ali Khan** : Without fee ?

**Shri Sris Chandra Chattopadhyaya** : I think Barristers do not accept fees ; so far as they are concerned they cannot claim anything . . . . .

**The Honourable Mr. Nurul Amin** : I think the Leader of the Opposition is referring to briefless Barristers.

**Shri Sris Chandra Chattopadhyaya** : I know pleaders can sue for fee, but a Barrister cannot sue for his fee.

**Mian Muhammad Iftikharuddin** (Punjab : Muslim) : I think the Inns of Court had not come into existence when you started practice !

**Shri Sris Chandra Chattopadhyaya** : These are my suggestions.

Of course, the provisions of trial by the Special Tribunal will expedite ; I agree. I once applied to have an important conspiracy case to be tried by a Special Tribunal in 1911 so that I could finish them early without much expense, but Government refused to send my clients to the Special Tribunal as they were afraid of the then Chief Justice Sir Lawrence Jenkins.

**Mian Muhammad Iftikharuddin** : Mr. President, Sir, I rise to make certain observations on the introductory speech of the gentleman who is piloting this Bill in this House.

Sir, I think he has understood the purport of this Bill incorrectly when he brings in the question of individuals. The importance of this Bill lies in the fact that it has been put forward to strengthen Pakistan, to increase the security of Pakistan. The question that an individual or a group of individuals will be treated more mercifully in a particular way, or more harshly in another way, is less important. The important thing is the method by which we strengthen Pakistan, and make it more secure ? That should have been the philosophy underlying a special measure like this to deal with a special case which has come up before the country. The Government receives full support of the people when any question of the security of the State comes before them. All parties

[Mian Muhammad Iftikharuddin.]

and people of various views who sincerely believe in this State and in its future would support the Government, however they may dislike the Government's actions in the ordinary administrative field. The consideration, therefore, under this Bill should have been whether the method of trial proposed in such cases will make Pakistan stronger or weaker. Now, the Member, who has brought forward this Bill has said that it was necessary on the one hand to make it a brief trial and on the other to give the accused a chance of defending themselves. I do not think, Sir, that is a correct way of looking at the case. If a briefer trial than this, if a summary judgment could strengthen Pakistan, by all means adopt these measures and if a trial lasting five years could strengthen Pakistan you must adopt that. It is unimportant whether certain individuals are tried and punished within a month or after five years. The important thing is that the process that we adopt should serve Pakistan. Sir, the method that has been adopted in this Bill does not help to strengthen Pakistan. The method of a more normal trial would have helped it more.

Sir, if we believe in the fact that Pakistani people love their country, if we believe, as I do, that there are very few countries in the world, the people of which are so keen to save and serve their State—are more keen to see it prosper—if we believe in this I cannot see why we lost a day in taking the people of Pakistan into confidence.

Sir, had this trial been held as an open trial I am sure if the accused are guilty of offences against the State, they would have been condemned by the people of Pakistan more; the authorities would have received even greater support for their measures, for the steps that they may take for the future security of Pakistan...

**The Honourable Khwaja Shahabuddin** (East Bengal : Muslim) : They will always receive that support except from "pretenders."

**Mian Muhammad Iftikharuddin** : "From pretenders"; I see. Well, I do not know what the Minister for the Interior means. I would like him to be a little more clear and he could get a clear reply from me.

**The Honourable Pirzada Abdus Sattar Abdur Rahman** : You know what he means.

**Mian Muhammad Iftikharuddin** : I don't. He should have the courage to say a little more clearly what he wants to convey.

Sir, even if there are a few "pretenders" in this country, who are not well-wishers of Pakistan, I think the seven crores or nearly eight crores of people—the remaining people—are strong enough, are numerous enough, to undermine the intrigues and activities of any pretenders or any traitors that there may be in this country. Therefore, I say an open trial would have strengthened our State, provided we believe that the traitors or hypocrites in this country—people who do not believe in the security and future of Pakistan—are not many.

Sir, the world over, even in what we call "Totalitarian States", e.g., Germany trials were held openly. Even under Hitler's regime the Reichstag Fire trial was held openly; in England trials are held openly; in Russia they are held openly and even in the time of the Imperial British Government the so-called conspiracy trials used to be held openly in India.



Why should we feel that our country requires more abnormal measures for its security in such cases than other countries of the world. I want to ask a straight question. Is it or is it not sincerely believed by the majority of the members of this House that people in Pakistan because of the peculiar history whereby we came to acquire this state—because of those historical reasons, apart from the few traitors or “pretenders”, love their country more than almost any other people in the world. That being so why should we adopt methods which are abnormal which are different from others. Sir, this was one thing, I wanted to bring to the notice of the House.

I feel that in many ways we are departing from the very stringent laws laid down by our erstwhile masters. We know that police in this country is notorious for the methods which it adopts to extract evidence. In British India no law courts were permitted to treat the confessions made to police as evidence. In fact I am not a lawyer but so far as I know it was even if a confession had to be made before a magistrate the police withdrew and then the accused was allowed to make the confession. That being so I cannot understand why in this particular case we allow this evidence to be put before the Judges which in the ordinary course is not allowed to be so placed. We know, Sir, in fact we have been talking about this for the past many years that there are places, for instance, the Lahore Fort where people are made to confess things—some truths, some untruths—but under circumstances which are not normal and under circumstances which do not exist in other countries of the world. That being so, I think the evidence taken by police should not have been admitted in this case.

Another point in this connection I wish to make and I am glad to notice that one of the members belonging to the Government in the Constituent Assembly (Legislature) is bringing forward an amendment whereby the evidence of people who are living will have to be given actually in the court as I understand the amendment. I hope it will be admitted because some people are prepared to give evidence if they have not to face a cross-examination. On the other hand if they know that the cross-examination is to be faced the evidence can change. I hope, therefore, that the amendment that has been put forward will be accepted.

Sir, again the Honourable Member who is piloting this Bill has mentioned about the procedure. He says: it is most just that could be arrived at, could be suggested, under the circumstances. I differ from him on this. If the highest court were always an infallible court then law courts all over the world would not have allowed so many stages in the process of administration of justice. Even in the courts of Pakistan today there are four stages as the Honourable Member in charge of the Bill has pointed out. Now if the highest courts were to dispense justice always evenly I am sure this lengthy procedure would have been rejected long ago. It is an expensive one and entails a lot of time. So there is some point in giving right of appeal and the point is that once a case is before a court and a decision is given some new point may come to light which may help in punishing or acquitting the accused. Therefore the process of justice demands that there should be more than one court. Once a decision is given the person who is punished should have one more opportunity and the prosecution should have one more chance at least of bringing necessary facts to the notice of higher court. Various matters can be ignored and that is why I think the court of appeal is necessary. In this case there is no right of appeal given. I hope, therefore, that the right of appeal both from the point of view of prosecution and from the point of view of accused will be given.



[Mian Muhammad Iftikharuddin]

Sir, we have talked about the secret trial in the Bill. The trial is to be so secret that even the lawyers are not to discuss the question involved in the case with anyone. There again it is making it more difficult for one to get all possible advice on various points of law. A lawyer may not be engaged in the first instance; he may be called in at a later stage. Discussions may have to be held to ventilate various points of view. That makes it necessary for one to get greater access to lawyers, and to records so as to get fullest help. In fact discussion quite often helps. The Bill debars the defence from these conveniences. Sir, this Bill as it stands gives the impression that we want to hide things. If other states of the world can stand conspiracies, intrigues, traitors can try them openly with the normal laws why not we. My criticism (I repeat and I am going to repeat it once again before I sit down after dealing with some other points) that the primary test is not how best to give justice to the accused—that is a secondary point—but how best to strengthen Pakistan and my criticism is mainly based on that, *i.e.*, you have to choose whether this method of trial will help Pakistan more or an open trial of a normal nature.....

**The Honourable Dr. Mahmud Husain** (East Bengal : Muslim) : Unconditional release without trial will perhaps strengthen best!

**Mian Muhammad Iftikharuddin** : That is after the trial if they are innocent.

**The Honourable Dr. Mahmud Husain** : Before the trial?

**Mian Muhammad Iftikharuddin** : You know better because the Government knows the case more than we do. So, I was treating the case—which involves a very grave question—with the responsibility that it deserves but the remarks of the gentlemen, oppose to Khwaja Shahabuddin and the remarks of Mr. Mahmud Husain have disappointed me. How frivolous they are! I hope they would not look at it with that frivolousness. I am considering this question with all the seriousness that it deserves.

**The Honourable Dr. Mahmud Husain** : Wonderful way of strengthening Pakistan!

**Mian Muhammad Iftikharuddin** : What?

**Mr. President** : Please do not take notice of this.

**Mian Muhammad Iftikharuddin** : If you permit to speak, I must take notice of them.

**An Honourable Member** : Please go on.

**Mian Muhammad Iftikharuddin** : Sir, again in the ordinary course a jury in England and assessors here were permitted. But in this case neither public nor jury or assessors are allowed as the case is to be held *in camera*. That being so, I feel as things are an impression is likely to be created that Pakistan is under a very grave danger; that Pakistan is probably a state in which normal methods of trial cannot be employed. That is not the situation. Pakistan is secure and safe from its inhabitants, despite the traitors and “pretenders” as any State of the world. That being so, I think Pakistan can stand on open trial not only of this, but of any conspiracy and that will strengthen the hands of the authorities. If the people are proved innocent, nobody will be more pleased than the authorities to acquit them. Sir, in both cases the authorities will be strengthened. The public support will be greater. The world will be

able to know how best we can stand these things. That is the reason why I request the gentleman who is piloting this Bill to bring these things into consideration, so that people may have no doubts—justice is a secondary question—I make bold to say that there may be cases which had they been entirely left in the hand of the Government—(I do not know and I have no reason to give any opinion in this case)—would have been more merciful than a court in Pakistan, but the Government has not kept this case in its own hands and rightly so because the people must have the confidence that fairness is done. It is not that justice would not have been done. I say that a Government may sometimes be more just nay more merciful than the law courts, but that is not the point. What concerns the State is that the people should feel that justice is done. The appearance of justice is necessary not only that actually justice is done or mercy is shown. I say that the Government could have dealt with this summarily, but the Government did not and rightly so. Government has adopted a different policy. I want the Government to go to the logical conclusion of the policy which they have adopted of trying people. The logical thing is to try them properly, so that people may feel that full justice is done. It is not that people have not so much confidence in the Government. It is not that the Government by itself would not have done justice, but the appearance of justice is also important. And the world should know that Pakistan can stand any suspected or real conspiracy, try people openly and punish or acquit them accordingly.

Finally, Sir, I come to one or two remarks that have been made by a very responsible person. I would have ignored the remarks of the Professor from Dacca, Mr. Mahmud Husain, because the manner in which he usually behaves in this House is known to the people, but I certainly resent the remarks made, which he has not clarified, by Khwaja Shahabuddin who happens to be the Minister of Interior too. Even though he has not clarified, them let me make myself very clear to him. I owe it to myself and to him.

Sir, this case which is before the country is a very unfortunate incident. I think nobody would be more pained than the Prime Minister of Pakistan and after him I think I am one of the few people who were pained as nearly as he in this matter. The Prime Minister of Pakistan is pained that people involved in this case were those in whom he had placed a great trust, in whom he had so much confidence. Another Member of this House may have been pained, because in this case are involved close relatives of that Member. I am pained because in this case is involved a close associate of mine whom I have known so well, a man though appointed to the post at which he worked by the Quaid-i-Azam was nevertheless in the last 3½ years one of my closest friends. So nobody in this House will be more pleased than the Prime Minister and myself if these people were acquitted but nobody in this House will be more anxious than the Prime Minister and myself to see that fullest justice is done no matter how harsh be the dictates of justice and if anybody is proved guilty of sabotaging or subverting the State, severest punishment is awarded to him. So that is very clear and finally, let the Minister of Interior know that I have my politics and I confess them openly and bravely. I have been to jails and I know how to suffer. Anything that I do in Pakistan in politics as I did in British days is done openly and frankly and I will bear all the consequences as I bore in the British days. In the meantime let him not say that he is treating anybody out of mercy. If any person he feels is guilty of trying to subvert the State, he should do his worst, no matter who he may be. Therefore the remarks he passed were unworthy of him and he has got the answer that he has deserved from me.

**\*Sheikh Sadiq Hasan** (Punjab : Muslim) : Sir, so far the Opposition have tried to make out that this Bill is very harsh. I assure them that it is very lenient and so they should not oppose it. If anything can spell ruin for the country it is conspiracy and discord. The authors of the present conspiracy had selfish ends to serve ; they wanted to grab the reins of Government in the country. I do not say as to who are involved in the conspiracy, but I do say that such conspiracies are replete with dangerous consequences and plunge a land in civil strife. I can never believe that the Pakistan Forces, of whom we are so proud, could have played into their hands. It is possible that one or two battalions or a few more officers might have fallen into the trap, but it is impossible that the conspirators could have ever succeeded in subverting the loyalty of our Armed Forces of whom we are so proud and in whom we repose perfect confidence. All that was possible was that because of the complicity of a number of military officers, it would have led to the outbreak of civil strife which would have lasted for a while.

Our chief danger lies in our having two frontiers. Had civil strife started in both Eastern and Western Pakistan, we would have been confronted with great difficulties and complications specially in Eastern Pakistan. At a time when we had been engaged in fighting among ourselves, the enemy would have attacked us. My friend Mian Sahib has no idea of the sufferings we had to undergo in East Punjab. If he could visualise those sufferings how 40 thousand girls were forcibly abducted, how barbarously Muslims were done to death, and, after the partition, what happened in East Punjab and how Muslims were massacred wholesale, . . . .

**Mian Muhammad Iftikharuddin** : I have toured the whole of the Punjab.

**Sheikh Sadiq Hasan** : If you could visualise the consequences of this conspiracy, you would not talk in such a strain. You have acquired such an evil habit . . . . .

**The Honourable Dr. Mahmud Husain** : Sir, that phrase is unparliamentary.

**Shaikh Sadiq Hasan** : It means : " bad habit ".

**Mian Muhammad Iftikharuddin** : It is very parliamentary, you go on.

**Mr. President** : What is the word ?

**Sheikh Sadiq Hasan** : It is not unparliamentary ; I have been in the Central Assembly for 17 years and words stronger than this have been used . . . . .

**Mian Muhammad Iftikharuddin** : It is certainly not unparliamentary. He does not know he is very parliamentary. If he had been unparliamentary, none of us would have been here.

**Shaikh Sadiq Hasan** : I have got 17 years' experience in Central and Punjab Assemblies ; I would never use unparliamentary language.

Sir, today we are hemmed in on all sides by enemies. As a result of this conspiracy our forces had been embroiled in fighting and our enemies would have got a chance to execute their evil designs. The fall of the Muslim kingdoms has invariably been due to the twin causes of selfishness and revolt.

How powerful was the Moghul Empire ! If, during the reign of Mohammad Shah, the Nizam of Hyderabad, the Vazier of Oudh and the Nawab of Bengal had not revolted, it is certain that the English could not have acquired a foothold here. It is, therefore, necessary that we should not take this conspiracy lightly and imagine that it is both unimportant and confined to a few individuals. To my friend Mr. Chattopadhyaya this

conspiracy appears as unimportant. If it had been unearthed in Russia of which Mian Sahib is a great admirer, the conspirators would have been shot down without much ado, and without bothering about the formalities of a trial. In the event of a conspiracy, much the same thing is done in other countries too. I ask the Pakistan Government why it is showing such leniency. In a serious matter like this, a Court Martial was called for. If such leniency is shown, people will begin to think that for such heinous crimes they will have to serve only a term of two years in prison where they will rest for a bit.

There is no doubt that Mian Sahib is sincere but in certain matters he indulges in opposition for the sake of opposition only. It is why he belittles the gravity of this situation. We want to make Pakistan strong. Does he not know that to shield the accused, false witnesses are produced. So far as the military secrets are concerned, they should not be dragged out into the limelight. Is this conspiracy just a part of the ordinary tactics to oust the Muslim League party from the elections? This is a matter of very grave import; it is a matter of life and death for the country; it concerns the Armed Forces which must be particularly free from such intrigues and machinations. It is due to the vigilance of the Prime Minister that he got an inkling of the conspiracy. But certain mischievous persons to advance their candidature in the elections started the canard that it was just an election stunt not worth any serious notice. I would, therefore, Sir, accuse the Government that it too did not give the matter as much importance as it deserved. I think that it is the duty of the Government not to belittle its importance, but to make an example of it, so that people may understand once for all that, if such things recur in future, condign punishment shall be meted out to those who hatch conspiracies and lay plots. It would not have mattered much if thousands—nay lakhs—had got killed; for instance, if I die as I stand here, it would make no difference, but it would have been an undiluted shame if thousands of Muslim girls had fallen into the hands of others. Would not the honour of Muslims have been besmirched (were such an outrage perpetrated on them as a result of this conspiracy)? In short, I want to urge the Government to pay particular attention to such matters and to attach due importance to this conspiracy. The Minister concerned will reply to the criticism of the details of the Bill when it comes up for consideration clause by clause. I would only remark that our country is not so strong as England. We have not got thousands of aircraft nor do we have like England 13 billion rupees to spend annually on the Army. I congratulate the Finance Minister for raising this money that we have allocated for expenditure on the Army. In the end I support this Bill as it stands.

**Mr. Nur Ahmed** (East Bengal : Muslim) : Sir, I very heartily support the motion for consideration of this Bill. Sir, criticisms have been made on some of the provisions of this Bill and even some of the critics have gone so far as to suggest that open trial should have been proper. Sir, I think it is a very special measure proposed to meet very special and extraordinary circumstances.

Sir, the trial which is going to take place under the provisions of this Bill is not an ordinary trial and not a trial of an ordinary criminal. Sir, it affects the happiness and the fate of the people of Pakistan as this plot, if it had materialised, would have endangered the very existence of Pakistan. Sir, there is a cry from every corner of Pakistan that the plotters of this plot should be given exemplary punishment and no mercy, no leniency should be shown towards them, whatever the status they may hold in the society.

[Mr. Nur Ahmed.]

Sir, Pakistan is an Islamic country and in an Islamic country, there should be sovereignty of law. Sir, our Government is going to try these criminals by a Special Tribunal not by Court Martial as some of the members have suggested that as they belonged to the Armed Forces they should have been tried by a Court Martial. Sir, there can be no objection that it is a very extraordinary trial which concerned the teeming millions of this State and a Court Martial would not have been better for such a trial. It is better that Government have come forward with such a Bill to constitute a Special Tribunal.

Sir, in this Bill provision has been made to give full facilities to the accused persons and the accused persons will not only know what are the charges against them, but they will also know the names of the witnesses to the Tribunal. Sir, it has been stated that the evidence will not be recorded and there is also a provision in the Bill that if the Court so desire, the Court can ask any person so authorised by it, to record the evidence. There cannot be any objection to this sort of provision but an objection has been made as regards the manner of taking evidence *in camera* before the Special Tribunal. The life of the witnesses should be protected and every provision should be made so that their life is not endangered. They may depose in a very secure atmosphere so that there may be fair trial.

Sir, the Special Tribunal consists of three Judges of the Federal Court or the High Court. There cannot be any objection to the composition of this Tribunal. Sir, it has been objected that there is no provision in the Bill for giving right of reply to the defence counsel. Sir, I have gone through the provisions of the Bill carefully and I think there is ample provision and ample facilities that are to be given for the defence of the accused persons.

Sir, there has also been objection as regards clause 8 of the Bill, that is, any statement recorded by a Judge made by any person who at the time of the trial is dead may be taken as evidence by the Special Tribunal. Sir, it is necessary for fair and impartial justice because if a man is dead and if his evidence is quite important to prove the case, before the Tribunal, there is no reason why it should not be taken as evidence. There are the three Judges of the High Court, they will consider it, they will analyse it and they will see if it is a correct statement; if it is not correct, then they may not accept it. I do not see any reason why this provision should have been objected to.

Sir, I think the Government is very liberal in giving these persons a chance of being tried in a Special Court. There is a cry from every corner of Pakistan that no mercy should be shown towards them. Sir, we strongly ask the Government that the persons should be given exemplary punishment. Sir, every Pakistani cannot but think that these people would have endangered not only the liberty, not only the happiness of the seven and a half crores of people of Pakistan, they would have endangered the freedom, independence of Asia and Africa because, Sir, on the strength of Pakistan depends the liberation of the vast population of Asia and Africa who are now groaning under the subjugation of a foreign rule. This is not an ordinary offence and this is not an ordinary trial. We should ask the Government to hold a trial of the accused speedily.

Sir, I strongly support the motion with these few words.

**The Honourable Mr. Abdul Hamid** (East Bengal : Muslim) : Sir, I would like to say a few words.....

**Mr. President :** There are several other speakers. In that case, we may adjourn the House and resume in the afternoon.

**Some Members :** That will be better.

**Prof. Raj Kumar Chakraverty** (East Bengal : General) : Sir, with regard to meeting this afternoon I wish to say a word. We are given to understand that we will finish our business today and we have got an important engagement in the afternoon. So, I request that you will kindly excuse us this afternoon. We should meet tomorrow morning or tomorrow afternoon.

**The Honourable Mr. Liaquat Ali Khan :** Sir, I am sorry for what the Honourable Member has said. It all depends on the House itself as to when it wants to finish the business. I think the Members  
1 P.M. should keep themselves free for doing the legitimate work for which we are all here. I think the business of the Assembly should take precedence over any other business and I would request my honourable friends to cancel any engagement they might have made and let us finish this Bill which is before the House, so that the Honourable Members who want to go back to their homes might be free to go ; otherwise it will mean a very great inconvenience to a number of Members of this Honourable House.

**Shri Sris Chandra Chattopadhyaya :** Sir, we were assured by Dr. Mahmud Husain that the Assembly will continue up till the 17th and therefore we had cancelled all our bookings.

**The Honourable Mr. Liaquat Ali Khan :** My honourable friend says that Dr. Mahmud Husain had assured him that the business will continue till the 17th. I do not know what bearing that has on whether we meet this afternoon or not. If my honourable friend is anxious to meet on the 17th, we shall meet again tomorrow, but that is no argument as to why we should not have a meeting of the Assembly this afternoon. As a matter of fact, this intimation was given because we thought that the business might go on till the 17th and it was given to suit the Honourable Members with regard to the arrangements that they might be making for return to their homes.

**Mr. President :** Then, I adjourn the House till 4 P.M. today.

The Assembly then adjourned for Lunch till Four of the Clock in the Afternoon.

The Constituent Assembly of Pakistan re-assembled at Four of the Clock, Mr. President (The Honourable Mr. Tamizuddin Khan) in the Chair.

#### THE RAWALPINDI CONSPIRACY (SPECIAL TRIBUNAL) BILL—*concl'd.*

**Mr. President :** We resume discussion on the Bill to provide for the setting up of the Special Tribunal to try the Rawalpindi Conspiracy Case.

**The Honourable Mr. Abdul Hamid** (East Bengal : Muslim) : Sir, I think the method adopted for the trial of this Conspiracy Case ought to meet with approval. After the announcement of this conspiracy, feeling of indignation has swept over the whole of Pakistan. I am glad that nobody is carried away by that feeling and they are going to have a trial by three persons who are qualified to be Judges of the Federal Court or a High Court.

[The Honourable Mr. Abdul Hamid.]

Sir, the Leader of the Opposition has pointed out certain things : alterations made in the method of trial, in the method of taking evidence, which I would have welcomed if it were a general trial, but this is a very extraordinary thing. The public feeling has been aroused. A serious conspiracy was hatched which would have done great damage to the very existence of Pakistan. The public of Pakistan would have liked to have a shorter trial. They would have liked that they should be dealt with in Military Courts rather in a public forum, but, Sir, because there are some difficulties ; because there are persons involved in that conspiracy who are not in the Military Department, therefore, this procedure is going to be adopted. I have heard certain members say that justice should be tempered with mercy and some suggesting that very severe and condign punishment should be given. I think they are out of court, for when we are going to place the case in the hands of a Tribunal we should say or do nothing to guide their independent judgment and independent decision. Sir, I was not a little surprised when Mian Sahib brought in the similarity of Russia and of Germany under Hitler.....

**Mian Muhammad Iftikharuddin** (Punjab : Muslim) : And England.

**The Honourable Mr. Abdul Hamid** : And England, I know. But Mian Sahib knows perhaps more than I do what are the conditions in Russia and should know how these people would have been treated in Russia. Has not Stalin done away with all his intellectual associate workers by methods which are far from approved methods ? What happened to Kamoniev, Zinoviev and Trotsky, who could not save himself even by going to another continent ? As regards Hitler, he knows how Roehm and other people were dealt with. To compare the methods adopted in Russia and Germany in connection with the prosecution of the people who are responsible for a conspiracy against the very existence of our State is very undesirable.

Sir, Mian Sahib is particularly keen that Pakistan should be strengthened. If we properly do justice then alone can Pakistan be strengthened and I think Pakistan will be strengthened if we adopt direct and expeditious methods of dealing with them. The Muslims have suffered enough from such individual and group conduct in the past and any such manifestation in the new State of Pakistan should always be nipped in the bud without much ceremony. In a democratic State—and Mian Sahib of all the Members in this Assembly wants that ours should be a democratic State—only the opinion of the majority should prevail and the Government which is sustained by the majority of the popular representatives should be the Government of the country. If any individual or group takes it into his head that he is the right man to think of what is good for Pakistan and takes it upon himself to drive out the Government, then there will be no democracy ; there might be an autocracy based on individualism, which ought not to be developed, ought not to be allowed to grow in the democratic State of Pakistan. The Mian Sahib knows very well that such individual conduct, such individual vanity has done enough mischief and perhaps was responsible for our subjugation in India. I am sure he will be the last person to encourage such individualism either in the military personnel or in civil life to develop as will be to the detriment of Pakistan.

Another objection that has been raised is that it is going to be a trial *in camera*. I think that decision is also a wise decision. Do you want to spread and broadcast through the length and breadth of Pakistan how these conspiracies are hatched and how they are developed and how the conspirators want to achieve their object ? If you do that you will be



doing a great disservice to the State. Do not allow people to know the very nefarious methods these conspirators adopted for doing away with the ordered Government of our State. Sir, I personally, therefore, think that the method adopted is a very wise method and it is by accident that the high military officers who were involved in the conspiracy are going to have this latitude ; otherwise, Court Martial ought to have been the best method of dealing with them.

I do hope, Sir, that the House will agree with the mover of the Bill and give its consent to it.

**The Honourable Mr. Liaquat Ali Khan** (Leader of the House) : Mr. President, it is not my intention to deal at length with the points that have been raised during the course of the debate. My honourable friend, Mr. Pirzada, would reply to the points that were raised by the Honourable the Leader of the Opposition and the Honourable Mian Iftikharuddin. I only propose, Sir, in general terms to say a few words about the Bill which is for consideration before this Honourable House.

Sir, although I was not able to give more details of the conspiracy when I made the statement on the floor of this House yet there was sufficient indication as to the nature and the seriousness of the conspiracy and I would have thought that the Honourable Members would have agreed with the Government that the best method of dealing with this conspiracy was what is being proposed in the Bill which is before the House.

Sir, the Honourable Leader of the Opposition and Honourable Mian Iftikharuddin have both stated that this expeditious trial is being arranged in the interests of the accused. That is not so. It is being arranged in the interests of Pakistan. They should realise that...

**Shri Sris Chandra Chattopadhyaya** (East Bengal : General) : I said expeditious trial is for the interests of the accused ; I only said that.

**The Honourable Mr. Liaquat Ali Khan** : Sir, I am sorry if I did some injustice. I mixed him up. He sits so close to Mian Sahib and it is easy to make the mistake on some occasions. Sir, I want to tell the House that as I stated the other day the nature of the conspiracy is such and the people that are involved in the conspiracy are such that the sooner the whole affair comes to an end, the better it is for the stability of Pakistan and the peace of mind of the people in Pakistan. That is why this expeditious trial is being arranged and that is why those ordinary methods which are provided in the ordinary law are being dispensed with.

Sir, my honourable friend the Leader of the Opposition said that he has been against the appointment of Special Tribunals from 1910 to 1942. From that, one would be right in concluding that since 1942 he has changed his view and since 1942 he probably thinks that appointment of special tribunals is a blessing and not a curse where the accused are concerned. But I suppose he was meaning that he was opposed to the special tribunals while he was actually in practice. Am I right ?

**Shri Sris Chandra Chattopadhyaya** : Yes.

**The Honourable Mr. Liaquat Ali Khan** : I do not know if it was bad while he was in practice. If so, then some uncharitable person might think that long-drawn-out trials are in the interests of a certain class and therefore the moment when he left that class he changed his opposition to special tribunals also.



[The Honourable Mr. Liaquat Ali Khan.]

Sir, Mian Iftikharuddin stated that we should have an open trial and he gave the example of Reichstag Trial in Germany and he said that in Russia also there are open trials and so they are in U. K. I am sorry, Sir, that he should have compared this conspiracy with the Reichstag conspiracy. That shows a diseased mind. If he thinks that this conspiracy, which has been unearthed, has been deliberately done by Government as a trumped up thing like Reichstag trial was put up by Hitler, then I am sorry that he has not done justice to the Government. He may regard himself as an honest person in this country but he should give some credit for honesty and integrity to others also who happen to have the responsibility of running the state and keeping Mian Sahib and others in comfort and in peace.

Sir, there is no comparison between the trials that took place in the matters of any conspiracy in other countries and the conspiracy which is going to be tried under this particular legislation. Will he point out to me a single conspiracy that was tried in open court of the nature which we are going to try by means of this tribunal either in Russia or in Germany? They would have used other methods. There would have never been any kind of trial of anybody in a court of law by the Special court or an ordinary court either open or secret. Sir, the Honourable Member should realize that we, being a democratic state, have adopted a method which, I can assure him, many countries in the world would not have adopted even today. What we feel is this that whatever may be our view, whatever may be the information in the hands of the Government, those that are accused of such serious offences should be tried by an impartial and judicial tribunal, a tribunal the members of which occupy today the highest judicial offices in our country. I would never be guilty of seeing an innocent person punished. I shall never be a party to see that a guilty person did not get his due. Sir, I would have thought that even Honourable Mian Iftikharuddin would give some credit to the Government that they have not adopted other methods which some other countries would have done in a case like this but they have adopted a procedure and method which would give as fair an opportunity to the accused persons to clear themselves, if they possibly can, as any other method could have afforded them. Sir, the Honourable Mian Sahib has vexed eloquence on the advantages of an open trial. If he had studied the reaction in the country he would have found that the majority of the people and a vast majority of the people are in favour of the trial being held *in camera* because they know the serious effect that publicity would have. I am not thinking of the world opinion; I am thinking of Pakistan and its stability and of our armed forces and the serious effects that the publicity of a case like this would have on so many elements in the country. Certainly it would not be in the interests of Pakistan to have open trial. Knowingly or unwittingly Mian Sahib when he has pleaded for an open trial has lined himself with a section that wants disruption in Pakistan. I am sorry that he should have allowed himself to be misled. Sir, the Honourable Mian Sahib stated that it was not a question of a few individuals but we should do whatever is for the good of Pakistan.

Sir, now this is, again, a matter of opinion. Mian Sahib may think that one thing is good for Pakistan. May be these very conspirators

thought that what they were going to do was for the good of Pakistan. Therefore, you cannot judge it according to the views of any particular individual or any class of persons.

I submit, Sir, and I hold that what we are doing is for the good of Pakistan. It is in the best interests of Pakistan and as I have stated, Mr. President, I want that no innocent person should suffer, because I always feel that so long as I have this responsibility, so long as I have been charged with the duty of serving the State and my people, I must never do anything for which I cannot give my answer to my Creator. I always have this in front of me—that one day I will be called upon by my Creator to answer for all my actions and, therefore, it is with that view, it is with that feeling that I want that those—however certain we may be about their guilt—who are involved in this conspiracy should be tried by a tribunal whose integrity and whose impartiality no one would be able to challenge.

Sir, Honourable Mian Iftikharuddin warned us towards the end and he told my honourable friend, Khwaja Shahabuddin, that he did not want any mercy from the Government, as he had suffered in the past. We all know that he had suffered in the past. I would not say that he is a hardened criminal, because they were not the offences of the kind for which a man is called a criminal. He did not want any mercy and he would be prepared to suffer for any misdeed. I can assure the Honourable Member that if he does anything which is against the interests of the State, I shall not show any mercy to him, nay even to my own son if he did anything against the interests of the State.

Sir, Mian Iftikharuddin stated that I was pained when I discovered this conspiracy. He is perfectly correct. I was shocked. I was pained not for the reason for which Mian Sahib was pained that there was any friend of mine or anyone that I liked who was involved in this conspiracy. No. With me where matters of State are concerned, personal likes and personal dislikes do not count. I was pained and shocked to find that there was a single Mussalman in Pakistan who could have been guilty of hatching a conspiracy of the type that was unearthed. That is why I was pained not for the reasons that Mian Sahib has attributed to me which are probably his reasons, that because a friend of his was involved in the conspiracy, therefore he was pained. Not at all. I was not pained for that reason.

Sir, I entirely agree with Honourable Mian Iftikharuddin that Pakistan is stable. The action of a few individuals does not take away the solidarity and stability of Pakistan. Pakistan is today, it is my claim, in spite of this unfortunate incident, the most stable country in Asia and one of the most stable countries in the world, but that does not mean that because Pakistan is a stable country, we should not take all those precautions which are necessary to see that the designs of the enemies of Pakistan do not bear fruit. We should see that the designs of the enemies of Pakistan do not take away from Pakistan that stability of which Pakistan and its people are rightly proud. Sir, it is with these views, with these ideas that after a very careful consideration we have come forward with this legislation which is before the Honourable House.

I might in the end just answer one point that was raised by Sheikh Sadiq Hasan. He said that these people should have been tried by a Court Martial. Yes, but if in a conspiracy there is any civilian involved together with the military personnel, then a trial by a Court Martial cannot take

[The Honourable Mr. Liaquat Ali Khan.]

place and that is the reason why these military officers that are involved in this conspiracy could not be tried by a Court Martial, unless we decided that no action would be taken against those civilians who were equally involved in this conspiracy. That is the reason, Sir, why this case of conspiracy could not be tried by a Court Martial.

I hope, Sir, the Honourable Members of this House would agree with us that we are giving the accused as fair a trial as is possible in any country. If we are taking certain precautions which are a departure from the existing practice in the matter of trial of such cases, it is because we are convinced that it is in the best interests of Pakistan.

**Mian Muhammad Iftikharuddin :** On a point of personal explanation. Courtesy demanded that I should not interrupt the Honourable Mr. Liaquat Ali Khan when he was speaking.

**Mr. President :** What is your personal explanation.

**Mian Muhammad Iftikharuddin :** Sir, the various points that he has raised in connection with my speech, are based on some misunderstanding. I would ask for the indulgence of the House.

I think the Honourable Mr. Liaquat Ali Khan has misunderstood my stand. The speech that I delivered is yet with the Assembly typists and if he could get a typescript copy of my speech, he would see that on most points he had misunderstood me. Firstly, Sir, I never threw any aspersions on the honest motives of the Government. On the contrary, I said that one could even expect a more generous attitude from the Government than could be shown in certain cases by law courts.

Therefore, there was no aspersion on the Government at all.....

**Mr. President :** Mian Sahib ! I think you should strictly restrict yourself to personal explanation, if any.....

**Mian Muhammad Iftikharuddin :** I could have shouted in the middle of his speech. I never threw any aspersion on the motives of the Government in taking this step....

**Mr. President :** I am doubtful if Honourable Mr. Liaquat Ali Khan said that the Government had that impression....

**Mian Muhammad Iftikharuddin :** It was said that I thought there were no other honest people. I know there are other honest people—very honest people—in Pakistan. Secondly, in this connection, all the time I was harping on the question that the security of Pakistan demanded.....

**The Honourable Khwaja Shahabuddin (East Bengal : Muslim) :** Is that personal explanation, Sir ?

**Mr. President :** It is not.....

**Mian Muhammad Iftikharuddin :** But there can always be flaws in a Bill. If Government members can move amendments with good intentions why not the Opposition.

**Mr. President :** This is not personal explanation.

**The Honourable Khwaja Shahabuddin :** On a point of order. Sir. How can you allow this ? I submit that Mian Sahib is not giving any personal explanation. He should not be allowed to proceed further.

**Mian Muhammad Iftikharuddin :** Sir, I was saying . . . . .

**Mr. President :** What you were saying, I know ; that is not personal explanation.

**Mian Muhammad Iftikharuddin :** It is a personal explanation. I said that though pained like the Prime Minister, like him I was anxious and keen that proper punishment be given to those guilty of crime against the State. I said that the security of the State was main consideration and we were sorry nay pained to find that anyone, we knew, should have gone against the State.

**Mr. President :** You are repeating yourself.

**The Honourable Khwaja Shahabuddin :** Is that personal explanation or explaining away ?

**Mr. President :** That point is over.

**Makhdumzada Syed Hassan Mahmud (Bahawalpur) :** Mr. President, Sir, I had no intention of speaking today but having heard some of the members on my right express certain views, I am compelled to say something now. Sir, some of the members criticising the Bill have also advocated that they are the people to whom the solidarity of Pakistan is most sacred. I having been a new member in this House have been carefully watching the proceedings and hearing the speeches made by various members. At first I had a clear mind and was convinced that some of the members on my right would be really differing in ideals with the Government or with the majority party and not differing for the creation of disruption in our country. Those that profess that Pakistan's solidarity is dearest to them must also make up their minds and believe in one principle that whatever they speak in this House or whatever they advocate is purely in the interest of the State and not for propaganda value which takes a popular space in certain papers of Pakistan.

It is not necessary, Sir, that all papers should be party organs or should represent the popular view of our countrymen. Some of them, as everyone of us is convinced, are nothing but disruptionists. When we talk in this House, I consider it our moral duty to voice the feelings of the people we stand to represent. Sir, I do not belong to a big city and nor have been in the company of very literate persons or people possessed of very enormous general knowledge. I come from the rural areas where perhaps simplicity and straightforwardness are the only things that the people possess. I do not understand the intricate debates, but I understand one thing that the people of Pakistan are very simple and all owe complete allegiance to the Government which exists by the will of the people. The Government of Pakistan is not ruling through a *lathi raj* as claimed by my friends.

Some of the members on my right have used some language which creates a doubt either in their own mind or in the minds of others and those words were that if the Government of Pakistan had taken the people into confidence, they would have let this case go to open courts. Does that mean that there is a doubt that this Government is not working by the will of the people and that it is ruling by force ? Certainly not, Sir. There is no one instance which any of these members can quote to justify this belief or conviction. Sir, the Public Safety Act was debated here and as we all know, no use worth the name has been made so far. At the same time I consider it the duty

[Makhdumzada Syed Hassan Mahmud.]

of our Government for the safety of our State, to put in force and to promulgate laws which will assure the people of the State safety and the solidarity of the country which they hold dearest to themselves.

Sir, I consider that the people of the State and the people of Pakistan, generally, were shocked to hear of this conspiracy. They expected immediate severe action against the conspirators. I think the Government of Pakistan have spared them a few more moments of comfort and luxury because perhaps they must be looked after. Had they been left to the people of the State, they would have been torn to bits because no one in Pakistan can tolerate treason and traitorship to our country. Sir, I myself was of the opinion that a Court Martial was the only alternative for such crimes. But as Honourable the Prime Minister has disclosed before this House, I am convinced that in the name of fairness and justice it is the only alternative left to the Government of Pakistan to place before this House the measures to be adopted against this case, as done within the Bill. I strongly support the Bill, Sir, and I congratulate the Government of Pakistan for having shown the consideration towards justice and fairness.

On my left a member suggested that I should not be saying "Government of Pakistan". It is a proposal put by the Government of Pakistan and the liability or the responsibility of passing the Bill is on the shoulders of every member of this House. Therefore, anybody criticising this action will be criticising the opinion of the majority of this House. I do not say that the Government of Pakistan takes the responsibility alone. They have put forward a proposal before the House and everyone of us can voluntarily discuss and amend or support the Bill if he thinks it is in the interest of the State. And I feel, Sir, that the majority of the members of this House strongly support the Bill and wish that an immediate action to implement this should be taken so that the matter ends and the long suspense that the people of Pakistan are involved in is over.

Sir, I think the Opposition or members who differ should definitely abide by certain principles of democracy in which it is clear that it shall be the rule of the majority. My experience in this House and in the place where I belong show, Sir, that there are certain members who have the tendency of advocating the cause of democracy and yet when they find the majority going against their wishes, they, in the name of democracy, go about doing propaganda that this is the rule by rod of authority and by pressure and not by democratic means. Sir, we clearly feel that they are the disruptionists and they are not the sincere people who differ in ideology, but their aims and objects are not in the interest of Pakistan. I can assure this House that every citizen of Pakistan shall stand firm to support this Bill *in toto* and that they will welcome the measure which has been proposed before this House today. With these few words, I resume my seat.

**The Honourable Pirzada Abdus Sattar Abdur Rahman (Sind : Muslim) :** I am glad, Sir, the Honourable Leader of Opposition has agreed that this sort of speedy trial is in the interest of the accused persons and he has said rightly that the accused persons will be freed of the expenditure on three different occasions, at least. But, I am sorry, I do not agree with him when he says that in special trials under special procedure, in the past, it has not been the fault of the accused persons when delays have occurred. I am not going to quote here instances or

cases, but he must be well aware that in certain cases, accused persons, although they were in the custody, have refused to come to a court of law to stand their trial and very ugly scenes were created and I do not want such things to occur again. But, there are instances, the Honourable Leader of Opposition knows it. Therefore, it is not right to say that the accused have not been in the past or cannot be in the future responsible for creating deliberate delays and that is the object why I have provided against adjournments on that ground and provided for trial to proceed in the absence of the accused if they are guilty of such tactics as I have mentioned just now.

Again, Sir, with regard to the composition of the Tribunal also, I am glad he agrees with it that this is the sort of highest tribunal that we can give to the accused persons. At this stage, I might dispose of another objection which seems to be with regard to matters of appeal to which Mian Iftikharuddin made reference. I think they have not understood the purpose why appeals have not been provided. It is not the question of doing away with the right of appeal, it is because an appeal is not necessary, as I said before. Who hears your appeals? Ultimately, as I said, it is the High Court Division Bench consisting of two Judges who hear the appeal and in case of difference of opinion, it is the third Judge who hears the appeal again. Now, is it not better that these very persons who are the final Judges hear the case instead of looking into the evidence as it came, recorded in writing before them? They should hear these very people who have to give evidence and record the evidence as it came before them. Therefore, take the functions of the trial courts as well as the appellate courts and certainly it is very much better and lawyers must have felt that where judges themselves on occasions when they fail to come to a decision, they have heard evidence themselves. There is a provision in the law that they can call a witness and hear evidence if it is necessary. I think, he should welcome that the highest tribunal is to go through the original trial in the case of accused person. Therefore, it is not a question of doing away with the right of appeal, but it is giving them appellate and the final authority for all the stages of the case in order to minimise time and in order to expedite the disposal of the case.

Now, Sir, other minor points have been raised by the Honourable Leader of Opposition. Here, he has said that the evidence should be communicated to the accused before the trial begins. Now, he is very well aware that section 286 is already there in the Criminal Procedure Code and the procedure of normal law is that when the accused person comes for trial before the Court, the Prosecutor is called upon to disclose all his evidence. He opens the case and in that he must give all the evidence before the trial has commenced. That he is going to do and that is the only provision we have got in the Criminal Procedure Code. There is no provision at all that the supply should be made in advance. In one of the amendments a period of seven days in advance is given.

**Shri Sris Chandra Chattopadhyaya :** I did not say about the Criminal Procedure Code, that I know, but in that case, there is a preliminary inquiry and the copy of evidence is supplied to the accused before trial is commenced. I referred to Criminal Law (Amendment) Act (XIII of 1908).

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** I am talking of the earliest possible stage when the case begins even before the committing magistrate when the Prosecutor comes and opens his case. You do not give anything in advance. He comes in the court of law even

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before the committing magistrate and he just tells what evidence he is going to lead and that is the only occasion when he delivers them before you. The names of the witnesses are also given and no further details are given. The point is that in Criminal Procedure Code or may be your Criminal Law (Amendment) Act, I am talking of the ordinary procedure, the ordinary procedure under the Code of Criminal Procedure is that you have got no such facilities given to the accused persons and nobody has found fault or anything wrong with that. Why should we give extra things in this law, that is my point.

**Shri Sris Chandra Chattopadhyaya :** I have not said that.

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** I am glad that you do not say that.

Then, again, Sir, referring to the right of reply mentioned in the Bill. He has again misunderstood, I am afraid, the whole point. It says section 297 of the said Code shall be read as if it required the Special Tribunal to open the case for defence. Now, there the words 'if any prosecutor's reply.....' the words 'if any' are there. If you refer to section 297, that repeats the very words 'prosecutor's reply', if any. Now, 'if any' words come from section 292—earlier section which tells you in which particular cases the prosecution will have a right of reply. Therefore, it is in these particular cases which are recognised by section 292 and which are referred to in section 297 and which section again is repeated and referred to here that the right of reply is there. Therefore, there is no provision for all those cases in which right of reply is not allowed. The prosecution will have a right of reply. That is not the intention and it is not at all envisaged in the Bill.....

**Shri Sris Chandra Chattopadhyaya :** I have not said that.

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** With regard to facilities regarding the copies, I would again remind him that the ordinary Criminal Procedure Code has not been done away with and with regard to those minor details the Criminal Procedure Code does apply. If he is entitled to any copies under that law, he will get them. Why do you want a special provision to be made for the man to be necessarily supplied with copies when he can get them under the ordinary procedure.

Coming to the most important point, according to him, that he raised—and he shook his head when he was speaking about it—it was about the police statements. The first and the most important thing which he must know is that it is the question of admissibility that is being allowed by both the sub-clauses of section 8. It is not that it is being made admissible for all purposes to be treated as substantive evidence and that is what he kept on repeating all the time. If he had read the section properly, he would have found that the most important words in it are 'for such purposes as the Court may think fit'. Now, here are the three Judges of the High Court and the Federal Court sitting to record a statement of the accused person. Now, they want to admit it, but the over-riding proof of the Evidence Act, if it is induced by a friend's promise or undue influence in anything like that is inadmissible. Therefore, it is left to the Court—the three Judges—who have got the judicial mind and who are working there with that judicial mind to decide to what extent that statement is to be used. Making admissible is nothing ; it may not be useful for any purposes. Therefore, the provision that we have made that the Court shall determine to what extent and for what purposes it will be made admissible is very important. We do not want to confine the Court by saying that such and such a thing will not be admissible because my lawyer friends must



have realised on several occasions that several statements made before the Police are sometimes for the benefit of the accused persons but we have not yet been able to make use of them because under section 162 of the Criminal Procedure Code statements of nobody made before the police can be used for any other purpose except for the purpose of contradiction. That means that the statements of an accused person cannot be used at all. What happens is this. The accused person makes one confession before the police and another confession before the court. You want to prove that the confession before the court is a false one. Therefore, if you could contradict by the confession that he had given before the police that two different statements had been given, you could prove that the confession before the court was false. But under the previous law you could not do this. But under this law if the Court consisting of three Judges decides that a statement of the accused person before the police is useful and for his benefit also, they will allow it and for the purpose of contradiction or for the purpose of proving that confession to be false, it is for the benefit of both. Some important things might have been left out and the Court might like to see what has happened before the police. This is not a new thing at all. It was a new thing which was introduced by the British people here and I am very sorry to admit that this should have been done in the case of India and Pakistan. This is a distrust of our people in a branch of our services which only the Britishers had created and Mian Sahib, who is usually averse to the Britishers, has propounded a theory today that the law established by the British in India should not be done away with. He said that it is according to the principles of justice and it should not at all be interfered with and it should be continued. Does he know that those very Britishers whose law he does not want to be interfered with do not practise that law in England at all. In England up to the present day or at any time the practice had been quite different. In England today or at any time before any statement before a police officer, whether it is confessionary or not, is admissible. It has never been made inadmissible. It was only in India that they had done so and I think the earlier we get clear of this the better. Let our police officers realise that we trust them; let their morals be raised and let them feel the responsibility that they are the free people of a free Government and not the corrupt people. I am really surprised that Mian Sahib today all of a sudden should have got up and said that this law which is enacted by the British is according to the principles of justice and should not be done away with.

I may remind this Honourable House again that even in undivided India this law was not practised everywhere. In the Presidency Towns of Bombay and Calcutta the provisions of section 162 did not apply. Statements before police officers have been admissible in India and Pakistan. Therefore, looking back to the framers of this law and what they do in their own country and what they have been doing here and now that we are a free people, I do not think there is anything wrong in this law, especially when the safeguard is there that the three Judges will decide for what purposes it is to be admissible and whether it is to be admissible at all or not.

**Mian Muhammad Iftikharuddin :** In England there is no Lahore Fort.

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** I do not think the Honourable Member himself understands what he says. Anyway, I am coming to his statement later on and then he can say whatever he likes.



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Then, Sir, the point has been raised with regard to the jury trial. Let me clear up one misunderstanding. Every person is not entitled to a trial by jury and the lawyers must be knowing it. It is only in some particular towns where the trial by jury is allowed and it is not in every case. Let me tell the House that the venue of this conspiracy will not allow them under the normal law to be tried by a jury but by assessors. Therefore, we have not taken away any right of the accused persons by making them not triable by the jury. I do not know what the views of the House or of lawyer members are with regard to the trial by jury, but I myself would very much prefer to be tried by three Judges of the highest possible Court than let my fate be decided by a jury. Therefore, no injustice has been done to anybody. First of all, they have no right to be tried by a jury because the place where the offence has occurred is not entitled to a trial by a jury but only a trial by assessors, and the trial by assessors is of very little assistance. Therefore, by giving them a trial by three High Court Judges *minus* the trial by jury no injustice has been done and no departure has been made from the normal procedure.

With regard to the last point raised by the Leader of the Opposition with regard to the choosing of a counsel by the accused, when he cannot engage a counsel himself, let me make it clear that we do not compel anybody to accept the counsel chosen by the Tribunal. It is only when a person is unrepresented, then you have got to engage a counsel for him at the expense of the Government. This rule is recognised under the ordinary criminal procedure in the case of accused persons who have committed such offences as murder or other heinous crimes. So, it is the usual criminal law that we have followed. And here also we have said that it is the Tribunal which will select the counsel and the Government will pay the expenses. Nothing more than that could be done. I think this is the best arrangement that the Government could make in case the accused has not engaged a counsel of his own.

I now come to the points raised by Mian Iftikharuddin. I was very much surprised when he started by saying that my approach and my attitude towards the principles of the Bill was not correct. When I said that we were trying to do justice expeditiously and without delay and without interfering with the principles of justice, he propounded a theory that it is not the principles of justice which are important and the question of individuals does not matter at all; but if it is for the good of the State that justice should be sacrificed concerning an individual, it should be done. That is how he started.

**Mian Muhammad Iftikharuddin:** I never said that.

**The Honourable Pirzada Abdus Sattar Abdur Rahman:** Very certainly and very clearly Mian Sahib wanted to suggest that if it was for the stability of Pakistan we could, in fact, sacrifice all principles of justice.

Let me put it plainly that we can give an answer to him, because  
 5 P.M. that is what he meant by saying all along that individual justice does not matter. I hope he will leave all talk of individual justice not mattering at all. He should have said all this previously also; for instance, when the Fundamental Rights were being framed here he should have said that individual justice does not matter. He must know that all justice is individual. It is not cumulative or...

**Mian Muhammad Iftikharuddin :** I said that the primary consideration should be the security of the State and the secondary consideration, the question of justice of the individual. That is what I said.

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** The Mian Sahib might correct himself. Probably he has realised that I have found him out.

(Interruptions by Mian Muhammad Iftikharuddin.)

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** No interruptions ; I am not yielding. He must have realised that if he would look back on the statements that he has made, he has said on dozens of occasions that justice is individual and for the sake of individuals it does not matter whether justice is being given to them or not if it is in the interest of the security of the State of Pakistan. I am still firm on what I said that we are doing justice, and justice, although it is individual, is always qualified and therefore we are not departing in any way from the principles of justice when we are legislating today.

The other point, Sir, that he raised was about the open trials. I am very sorry about his ignorance. He made a sweeping statement that no country in the world allows trials *in camera*. I was surprised. Probably he has not been aware of our own Criminal Procedure Code which, if he were to refer to section 352, he will find provides for open trials and says in the proviso that the presiding Judge may, if he thinks fit, order at any stage of a trial that the public generally, or any particular person, shall not remain in the room or building used by the Court without assigning any reasons for it. Therefore, this is an accepted principle that if, for any consideration, a court of law at any time decides that it should not be open to the public and that it should be a secret trial, it can order accordingly.

Let me give him examples from other countries which are, according to him, advanced. The Britishers, the Americans, everybody, in every Code of law, has got a provision that if they so decide they can exclude anybody, or the whole public, from hearing of the case. I might remind him of the recent case of Dr. Fusch, who disclosed the atomic secrets in Great Britain and was tried there. It was a trial *in camera*, a secret trial. They have got provisions over there. Several other trials of spies for offences against the State of a serious nature, such as these, have been held *in camera*. You cannot find in any country an instance in which delicate offences against the State have been tried openly. They have always been tried *in camera*. Come again to our own Evidence Act, which provides that all documents and all information with regard to State secrets cannot be disclosed even in a Court of Law. A Judge has got no discretion when the Head of a Department decides and says "No, I withhold this information or document". The Judge or the Court cannot compel him to disclose the grounds on which it is a secret document or information, and he would admit that this trial will be full of State secrets. Therefore, trying to have this trial open by saying what will people think, as if we have got to hide something, or as if we are doing something very unusual, would not convince anybody. Ignorance is always dangerous as everybody has said and this has been proved to me convincingly today. If I had not made this thing clear and people had heard only the speech of Mian Sahib, they would have thought that we had something horrible to conceal. To have secret trials is one of the recognized principles and it is done under

[The Honourable Pirzada Abdus Sattar Abdur Rahman.]

our own Criminal Procedure Code and every country does it, and therefore I do not see anything wrong. I don't know why he should be afraid that justice would not be done and why he should have brought in all those slogans and maxims of law.

Then, Sir, he raised the question of police statements to which I have already replied and made it very clear that it is left to the Court itself to admit them for any particular purpose that they want.

Then, Sir, he was very glad at an amendment proposed by Mr. Abul Basher Mahmud Husain, whom he desired as "Dr. Mahmud Husain". Let me tell him that it was not an amendment by Dr. Mahmud Husain restricting the operation of clause 8 only to dead persons. The Mian Sahib has been very anxious that the trial of the case should be expeditious and no delay should occur, but is he aware of the fact that it has happened in a number of trials—I could give him instances if he wants—that witnesses have been taken away and hidden by the accused persons with the object that the case should not proceed? It is a matter of daily occurrence that if an accused person wants an adjournment he makes the witness disappear. You cannot put a witness into jail and secure his presence. If you want to restrict this clause to dead persons and exclude those persons who have gone away or disappeared and cannot be procured without any expenditure or any amount of delay, you may have to wait for them for six months and hold up your case on that account. They may have gone away at a distance or disappeared and in that event you can always make use of their statements, so that it is wrong to confine this clause only to dead persons. In this connection, I would refer him to section 32 of the Evidence Act which refers to both dead persons as well as persons whose presence could not be secured because of delay or for any amount of unnecessary expenditure. So that principle is already in the Evidence Act. It is not restricted to certain people; it always applies to all those people who cannot be secured and may be living; and because we have only extended that very principle therefore nothing wrong has been done and he should not have felt jubilant that one of the Government Members has moved an amendment and therefore it should be accepted.

Then, Sir, he referred to the right of appeal. Let me remind him that the prosecution as well as the accused persons under the law have both got a right of appeal—they have both got a right of appeal—and even that right of appeal is being considered under this. Neither the prosecution nor the accused persons have a right of appeal and therefore it is not treating anybody unfairly. You take away the right of both sides, and the reason is very good. We are giving them the highest Tribunal which can act at the same time as the trial Court and Appellate Court also and, therefore, to say that something very unusual is being done to the accused persons, which should not have been done, is absolutely wrong.

Then, Sir, he made the same remark about the trial by jury, to which I have already answered and then finally emphasized the same point, repeated every time again and again, that he was very much pained—as much pained as the Honourable Mr. Liaquat Ali Khan—but every time he kept on saying that the individual justice does not matter; if the security of the State requires, pass any law to dispense justice, but all the same he kept on pressing things which were to the advantage of the accused persons. I did not find him pressing even a single thing which was for the benefit of the prosecution, which might have

tried to remove a lacuna in favour of the prosecution. All the points that he has mentioned—and he has pressed every one of them—are in favour of the accused. Therefore, I cannot believe that the individual does not matter to him. It is, I think, individual who was talking, and it was definitely, I am sorry to state any other consideration which was talking all the time, through him.

I have, Sir, dealt with almost every point that was raised.

Now, Sheikh Sadiq Hasan was on the contrary of the opposite view: that we had not gone far enough—there should have been something very much more stringent. But I might tell him that we are a democratic State and, therefore, we have got to proceed on democratic lines and, while providing for a speedy trial and eliminating all those lacunae which provide for delays in ordinary trials, our concern has been to see that the principles of justice—admitted principles—with slight modifications to suit the present trials are applied here, so that the cases could be disposed of expeditiously and without any delay. That has been our concern and therefore, however much I might wish because at the circumstances of this particular case—it being such a serious thing as he has described it and with such serious consequences against the State of Pakistan which we have earned with such great difficulty—I would still stick to this democratic principle and concede the right of fair trial and fair justice to everybody and which my Bill guarantees as I have produced it before the House.

**Mr. President :** The question is :

“That the Bill to provide for the setting up of the Special Tribunal to try the Rawalpindi Conspiracy Case be taken into consideration.”

The motion was adopted.

**The Honourable Dr. Mahmud Husain** (East Bengal : Muslim) : Sir, I beg to move :

“That in clause 2 of the Bill :

(a) to sub-clause (1) the following explanation be added (I am changing the word ‘note’ to ‘explanation’ because it is an explanation. The explanation is) :—

‘*Explanation.*—The expression “Rawalpindi Conspiracy Case” means any case which may be placed before the Special Tribunal by the Central Government under sub-section (2) of section 3, and which arises out of the treasonable conspiracy unearthed . . . . .”

(I am removing the words “at Rawalpindi.”)

“ . . . . . in February-March, 1951.”; and

‘(b) in sub-clause (2), after the word “through” the word “death” followed by a comma be inserted’.”

I am adding a comma after “death” and I am making it “February-March” instead of “March” and I am omitting “at Rawalpindi”.

**Mr. President :** Amendment moved :

“That in clause 2 of the Bill :

(a) to sub-clause (1), the following explanation be added :—

‘*Explanation.*—The expression “Rawalpindi Conspiracy Case” means any case which may be placed before the Special Tribunal by the Central Government under sub-section (2) of section 3, and which arises out of the treasonable conspiracy unearthed in February-March, 1951.’; and

‘(b) in sub-clause (2), after the word “through” the word “death” followed by a comma be inserted’.”

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** Sir, I accept the amendment.

**Mr. President :** The question is :

"That in clause 2 of the Bill :

(a) to sub-clause (1), the following explanation be added :—

*'Explanation.*—The expression "Rawalpindi Conspiracy Case" means any case which may be placed before the Special Tribunal by the Central Government under sub-section (2) of section 3, and which arises out of the treasonable conspiracy unearthed in February-March, 1951.';; and

(b) in sub-clause (2), after the word "through" the word "death" followed by a comma be inserted'."

The motion was adopted.

**Mr. President :** The question is :

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

**The Honourable Dr. Mahmud Husain :** Sir, I beg to move :

"That in sub-clause (2) of clause 3 of the Bill—

(a) after the word "committed" occurring in the sixth line, the words "by each of the accused person" be inserted ; and

(b) the following note be added :

*"Note.*—The submission of a list of witnesses under this sub-section shall not preclude the Central Government or the prosecution . . . . ."

(Here I am adding "or the prosecution".)

" . . . . . from submitting additional names of witnesses at any subsequent stage of the prosecution evidence in the case."

**Mr. President :** Amendment moved :

"That in sub-clause (2) of clause 3 of the Bill—

(a) after the word "committed" occurring in the sixth line, the words 'by each of the accused persons' be inserted ; and

(b) the following note be added :—

*'Note.*—The submission of a list of witnesses under this sub-section shall not preclude the Central Government or the prosecution from submitting additional names of witnesses at any subsequent stage of the prosecution evidence in the case'."

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** I accept the amendment.

**Mr. President :** The question is :

"That in sub-clause (2) of clause 3 of the Bill—

(a) after the word 'committed' occurring in the sixth line, the words 'by each of the accused persons' be inserted ; and

(b) the following note be added :—

*'Note.*—The submission of a list of witnesses under this sub-section shall not preclude the Central Government or the prosecution from submitting additional names of witnesses at any subsequent stage of the prosecution evidence in the case'."

The motion was adopted.

**Shri Dharendra Nath Dutta** (East Bengal : General) : I move, Sir,

"That to clause 3 of the Bill the following new sub-clause (3) be added :—

(3) That the accused shall be furnished with papers regarding the charges and with the list of witnesses whom the prosecution intends to produce in respect of each charge at least 7 days before the trial begins.'"

I listened with attention the speech delivered by the Honourable Minister, Mr. Pirzada. Really, Sir, before a case is taken up by a High Court the prosecution makes out the case and says what is the case and before the case begins there is an inquiry stage under Section 18 of the Criminal Procedure Code where witnesses are examined and the

accused person is in a position to know as to who are the witnesses to give evidence and what are the details of the case of the prosecution. Now that the inquiry stage has been dispensed with it is necessary that the accused person should be in a position to know the charges that have been brought against him as well as the list of the witnesses whom the prosecution intends to produce in respect of each charge at least seven days before the trial begins so that the accused persons may be able to defend themselves and they may be able to know what evidence is going to be given against them and by whom. With these words I move the motion for the acceptance of the House.

**Mr. President :** Amendment moved :

"That to clause 3 of the Bill the following new sub-clause (3) be added :—

'(3) That the accused shall be furnished with papers regarding the charges and with the list of witnesses whom the prosecution intends to produce in respect of each charge at least seven days before the trial begins.'"

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** Sir, I am sorry I cannot accept this amendment. My friend knows that I do not want to introduce anything new in the Code of Criminal Procedure which did not exist before. He knows there is nothing in the Code of Criminal Procedure by which an accused person shall have copies of all these documents before the committal proceedings begin or the trial actually begins. I do not see any risk. The judges are there ; they can decide if the accused wants time for preparation and give him time. It is for them to give time or not to give time. That is what is happening in courts of law normally. Therefore, I am not going to accept any departure from the normal principle of the Code of Criminal Procedure and I oppose the amendment.

**Mr. President :** The question is :

"That to clause 3 of the Bill the following new sub-clause (3) be added :—

'(3) That the accused shall be furnished with papers regarding the charges and with the list of witnesses whom the prosecution intends to produce in respect of each charge at least seven days before the trial begins.'"

The motion was negatived.

**Mr. President :** The question is :

"That clause 3, as amended, stand part of the Bill."

The motion was adopted.

Clause 3, as amended, was added to the Bill.

**Shri Dharendra Nath Dutta :** Sir, I beg to move :

"That for part (c) of sub-clause (1) of clause 4 of the Bill, the following be substituted :—

'(c) the proceedings of the Court shall be recorded in English under the direct supervision of the Special Tribunal and the evidence of each witness shall be taken down in shorthand or typescript by a person specially appointed for the purpose, and the transcript of the shorthand or the typescript, duly corrected, shall be placed on record ; and'

**Mr. President,** so far as the present clause (c) is concerned it reads :

"The proceedings of the Court shall be recorded in English under the direct supervision of the Special Tribunal, and one of the members thereof shall make a memorandum of the substance of the evidence of each of witnesses as the examination proceeds :

Provided that, by direction of the Special Tribunal, the evidence of any witness may be taken down in shorthand or typescript by a person specially appointed for the purpose, and the transcript of the shorthand or the typescript, duly corrected shall be placed on record."

[Shri Dharendra Nath Dutta.]

My amendment is this that in all cases the evidence of the witness shall be taken down in shorthand. The whole evidence shall be placed on the record. It is not, Sir, that only the memorandum shall be taken down. Clause (c) as it at present stands lays down that the general procedure would be that the memorandum shall be taken down but subject to a certain proviso, that in the case of any witness the Special Tribunal may order that the whole evidence may be recorded. My submission is this that in cases like this, the memorandum of the evidence will not be sufficient. The whole evidence shall be placed on record. We have carefully listened to the speech delivered by the Honourable Prime Minister that really the guilty person should be punished and the innocent should not be punished. We have to give them a fair trial. We are all agreed in this matter. So I submit that the whole evidence shall be placed on record. With these few words I move my amendment for the acceptance of the House.

**Mr. President :** Amendment moved :

"That for part (c) of sub-clause (1) of clause 4 of the Bill, the following be substituted :—

'(c) the proceedings of the Court shall be recorded in English under the direct supervision of the Special Tribunal and the evidence of each witness shall be taken down in shorthand or typescript by a person specially appointed for the purpose, and the transcript of the shorthand or the typescript, duly corrected, shall be placed on record ; and '.

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** Sir, I oppose the amendment. There is some misapprehension about this amendment, because if the Honourable Member were to read clause (c) carefully, he would not have brought up this amendment. Clause (c) reads :

"The proceedings of the Court shall be recorded in English under the direct supervision of the Special Tribunal, and one of the members thereof shall make a memorandum of the substance of the evidence of each witness as the examination proceeds . . . . .

It says the proceedings of the Court shall be recorded in English. It does not say that that shall be in English. It says it will be recorded in English, and that a full record of the statement will be taken. What he is trying to do, on the contrary, is that he is taking the additional record in a memorandum. I don't think he means that, and therefore I hope he will not press the amendment.

**Shri Dharendra Nath Dutta :** What does 'recorded' means ? The whole evidence shall be recorded in shorthand.

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** It does not say : it shall be recorded, but in certain circumstances or a certain situation, according to the discretion of the Court, it may be recorded in shorthand.

**Shri Dharendra Nath Dutta :** At present it says that a memorandum shall be made.

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** I request the Honourable Member to read clause (c) with me again. It says "The proceedings of the Court shall be recorded in English under the direct supervision of the Special Tribunal, and . . . . . ." What does 'recorded' mean ? Therefore, as I said, everything is provided. I think he misunderstands it and his purpose is that there should be a complete record in English also, which is safeguarded under this. In addition there may be a memorandum by the Judge himself and this



means that the record must be made by the Judge himself. The proceedings shall be recorded in English, but in addition to that in his own writing the Judge may also make a memorandum of it. Therefore, there shall be a complete record, and there is no doubt about it.

**Mr. President :** The question is :

"That for part (c) of sub-clause (1) of clause 4 of the Bill, the following be substituted :—

'(c) the proceedings of the Court shall be recorded in English under the direct supervision of the Special Tribunal and the evidence of each witness shall be taken down in shorthand or typescript by a person specially appointed for the purpose, and the transcript of the shorthand or the typescript, duly corrected, shall be placed on the record; and'".

The motion was negatived.

**Mr. President :** The question is :

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

**The Honourable Dr. Mahmud Husain :** Sir, I beg to move :

"That in sub-clause (1) of clause 5 of the Bill, for the words 'any other law' occurring in the sixth line, the words 'any law' be substituted."

**Mr. President :** Amendment moved :

"That in sub-clause (1) of clause 5 of the Bill, for the words 'any other law' occurring in the sixth line, the words 'any law' be substituted."

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** Sir, I accept it.

**Mr. President :** The question is :

"That in sub-clause (1) of clause 5 of the Bill, for the words 'any other law' occurring in the sixth line, the words 'any law' be substituted."

The motion was adopted.

**Mr. Ghayasuddin Pathan (East Bengal : Muslim) :** Sir, I beg to move :

"That in sub-clause (3) of clause 5 in the second line, for the word 'sees' before the word 'fit' the word 'deems' be substituted."

Sir, it is only a verbal amendment and I think the word 'deems' is more suitable and very often used in legal language.

**Mr. President :** Amendment moved :

"That in sub-clause (3) of clause 5 in the second line, for the word 'sees' before the word 'fit' the word 'deems' be substituted."

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** Sir, I accept it.

**Mr. President :** The question is :

"That in sub-clause (3) of clause 5 in the second line, for the word 'sees' before the word 'fit' the word 'deems' be substituted."

The motion was adopted.

**The Honourable Dr. Mahmud Husain :** Sir, I beg to move :

"That after sub-clause (3) of clause 5 of the Bill, the following new sub-clauses be added :—

'(4) Notwithstanding anything contained in sub-section (2) of section 2, Army Act, 1911, any of the accused persons who was subject to that Act at the time of the commission of any offence under that Act which is charged against him and is included in the list of formal charges, shall be deemed for all the purposes of this Act, to be subject to the Army Act, 1911.

(5) For the purposes of this section, the expression 'offence' shall include the abetment thereof by any of the accused persons."

**Mr. President :** Amendment moved :

"That after sub-clause (3) of clause 5 of the Bill, the following new sub-clauses be added :—

'(4) Notwithstanding anything contained in sub-section (2) of section 2, Army Act, 1911, any of the accused persons who was subject to that Act at the time of the commission of any offence under that Act which is charged against him and is included in the list of formal charges, shall be deemed for all the purposes of this Act, to be subject to the Army Act, 1911.

(5) For the purposes of this section, the expression 'offence' shall include the abetment thereof by any of the accused persons.'"

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** Sir, I accept it.

**Mr. President :** The question is :

"That after sub-clause (3) of clause 5 of the Bill, the following new sub-clauses be added :—

'(4) Notwithstanding anything contained in sub-section (2) of section 2, Army Act, 1911, any of the accused persons who was subject to that Act at the time of the commission of any offence under that Act which is charged against him and is included in the list of formal charges, shall be deemed for all the purposes of this Act, to be subject to the Army Act, 1911.

(5) For the purposes of this section, the expression 'offence' shall include the abetment thereof by any of the accused persons.'"

The motion was adopted.

**Mr. President :** The question is :

"That clause 5, as amended, stand part of the Bill."

The motion was adopted.

Clause 5, as amended, was added to the Bill.

**The Honourable Dr. Mahmud Husain :** Sir, I beg to move :

"That in clause 6 of the Bill—

(a) in sub-clause (1), for the words 'times and places' the words 'place or places' be substituted ; and

(b) in sub-clause (3), for the word 'documents' occurring in the second line, the word 'document' be substituted ; and the following exception be added at the end :—

'*Exception.*—The provisions of this sub-section shall not apply to any communication between any accused person and his counsel, which is made *bona fide* for the purposes of the defence of such accused person in the case.'"

Sir, 'place or places' is a better substitute for 'times and places', because it is not necessary for Judges to refer to Government for changing time from 3 o'clock to 4 o'clock, or from 10 to 11 o'clock.

Then, Sir, the word 'documents' is a misprint.

It has been substituted by the word 'document'.

**Mr. President :** Amendment moved :

"That in clause 6 of the Bill—

(a) in sub-clause (1), for the words 'times and places' the words 'place or places' be substituted ; and

(b) in sub-clause (3), for the word 'documents' occurring in the second line, the word 'document' be substituted ; and the following exception be added at the end :—

'*Exception.*—The provisions of this sub-section shall not apply to any communication between any accused person and his counsel, which is made *bona fide* for the purposes of the defence of such accused person in the case.'"

**Shri Dharendra Nath Dutta :** Sir, I beg to move :

"That sub-clause (2) of clause 6 of the Bill be deleted."

and

"That sub-clause (3) of clause 6 of the Bill be deleted."

Sir, this refers to the secrecy and publicity of the trial. Of course we have heard with attention to the speech of Honourable the Prime Minister and Honourable the Minister in charge of the Bill saying that secrecy is necessary. Reference was made to section 352 of the Indian Criminal Procedure Code. It lays down : "The place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed an open court, to which the public generally may have access, so far as the same can conveniently contain them : provided that the presiding judge or magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court."

You will find really that the trial should be public and public should have access and in special circumstances this proviso has been made for the benefit of the accused in certain cases. In certain special circumstances where the accused may have objection that in the presence of certain persons the evidence cannot be properly given, the trying judge has the discretion in this matter and he may say that the trial for a particular person shall be in secret. But, Sir, we have heard with regard to this publicity and secrecy—it is for the benefit of the State, it is said. I do not know what does that mean. Is the secrecy for the benefit of the State or of the accused ? I feel in a completely different way. It is for the benefit of the accused. I think no argument can be advanced that really by making this trial secret the interest of the State will be served. Certainly the interest of the State will not be served because in secrecy there will be a large number of rumours spreading and the rumours do mischief to the State and if the trial is a public one there will be no rumours. Therefore, Sir, I feel very strongly that it is in the interest of the State that the trial should be in public. With these words, I commend my motion for the acceptance of the House.

**Mr. President :** Amendment moved :

"That sub-clause (2) of clause 6 of the Bill be deleted."

and

"That sub-clause (3) of clause 6 of the Bill be deleted."

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** Sir, I think the Honourable Member was probably busy looking up books or studying something at the time when I touched this point in my general reply. He read section 352 of the Criminal Procedure Code but I have not been able to find the words that he has read in it. I think nowhere it is mentioned that this proviso is for the benefit of the accused. May I read the proviso :

"Provided that the presiding Judge or magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court."

I do not see anywhere mentioned that this is for the benefit of the accused. It is, Sir, very clear that the Court at its own discretion, as it thinks fit and without assigning any reason, can make a secret trial

[The Honourable Pirzada Abdus Sattar Abdur Rahman.]

and not admit any person. So this principle is already there. My friend has worked it probably for 30 or 40 years—the whole of his life—as a lawyer and he has not thought it fit to make the amendments either in the Provincial Legislature or anywhere else.

I have made it clear that we are following the general principles of the Code of Criminal Procedure but my friends here have been trying to confer on accused more benefit than even the ordinary accused persons have. I do not see any genuineness or sincerity in their assertions. They seem to be particular that these accused persons should not be punished. Every time you want to depart from the normal procedure you try to confer my benefits on the accused. This is one instance and there was another amendment some time back. You want that the accused should be let off and ...

**Shri Dharendra Nath Dutta :** I did not say that ...

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** May I request the Honourable Member that when he refers to a particular enactment of law he should have the courtesy to read the words properly? He said that that section was for the benefit of the accused. I do not find any of those words anywhere. Therefore, Sir, this is in accordance with the normal procedure and I am not going to depart from the normal procedure in this case. Therefore, I oppose the amendments.

**Mr. President :** The question is :

“That sub-clause (2) of clause 6 of the Bill be deleted.”

The motion was negatived.

**Mr. President :** The question is :

“That sub-clause (3) of clause 6 of the Bill be deleted.”

The motion was negatived.

**Mr. President :** The question is :

“That in clause 6 of the Bill—

(a) in sub-clause (1), for the words ‘times and places’ the words ‘place or places’ be substituted ; and

(b) in sub-clause (3), for the word ‘documents’ occurring in the second line, the word ‘document’ be substituted ; and the following exception be added at the end :—

‘Exception.—The provisions of this sub-section shall not apply to any communication between any accused person and his counsel, which is made *bona fide* for the purposes of the defence of such accused person in the case.’”

The motion was adopted.

**Mr. President :** The question is :

“That clause 6, as amended, stand part of the Bill.”

The motion was adopted.

Clause 6, as amended, was added to the Bill.

**The Honourable Dr. Mahmud Husain :** Sir, I beg to move :

“That to clause 7 of the Bill the following be added at the end :

‘but in any such case, the Special Tribunal shall proceed with the trial and after taking necessary steps to appoint an advocate to defend any accused person who is not represented by counsel.’”

**Mr. President :** The question is :

"That to clause 7 of the Bill the following be added at the end :—

'but in any such case, the Special Tribunal shall proceed with the trial and after taking necessary steps to appoint an advocate to defend any accused person who is not represented by counsel.'"

The motion was adopted.

**Mr. President :** The question is :

"That clause 7, as amended, stand part of the Bill."

The motion was adopted.

Clause 7, as amended, was added to the Bill.

**Shri Dharendra Nath Dutta :** Sir, I beg to move :

"That sub-clause (2) of Clause 8 of the Bill be omitted."

Sir, this sub-clause reads : "Notwithstanding anything contained in the Evidence Act, 1872, or in the Code of Criminal Procedure, 1898, the Special Tribunal may receive in evidence, for such purposes as it may think fit, any statement recorded in the course of the investigation of the same case by a police officer, made by any witness or as an accused." Sir, this is opposed to the fundamental principles of jurisprudence...

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** British-made law has thus become fundamental !

**Shri Dharendra Nath Dutta :** It is your law and we have accepted it. I was referring to this sub-clause (2).

Then, Sir, really the statement before the Police should not be taken into evidence, Sir. I find the Honourable Minister in charge of the Bill says that power has been given to the Special Tribunal to receive such evidence for such purpose as it may think fit. But, Sir, the law is this that the statement made before the Police is not to be taken in evidence for any purpose whatsoever. That is section 162 of the Evidence Act. Really, Sir, this is the proviso which has been put in for the benefit of the accused persons provided that when any witness is called for by the prosecution in such inquiry or trial, whose statement has been reduced to writing as aforesaid, the Court shall on the request of the accused refer to such writing and direct that the accused be furnished with a copy thereof in order that any part of the statement may be used to contradict such witness in the manner as provided in section 145 of the Evidence Act. This proviso has been put in there for the benefit of the accused that if a witness makes really a different statement before the court from the statement he made before the Police, the accused person can request that he may be furnished with a copy thereof which may be used for contradicting the witness. That is the law, Sir, but here in this Bill power is given to the Special Tribunal to take any evidence for such purpose as it may think fit, even for the benefit of the prosecution. That is against the principle of criminal jurisprudence. I submit, Sir, that there is very good reason and I submit that we have got independence by British Act, that is Independence Act and I do not wish to refer to that here. This sub-clause really gives a benefit to the prosecution. Therefore, I submit that these statements should not be used for the benefit of the prosecution at any time. With these few words, I move the motion for the acceptance of the House.

**Mr. President :** Amendment moved :

"That sub-clause (2) of clause 8 of the Bill be omitted."

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** Sir, I am again sorry to state that the Honourable Member has not understood section 162 and did not understand my speech either. I said, Sir, that under section 162, an accused cannot use his own statement for his own benefit.

Will Mr. Dutta please listen to me, as he might again raise the same points. I can now understand the reason why Mr. Dutta did not follow my argument when I was speaking. He must be busy at that time talking to Mian Sahib as he is doing now. I was replying to his point that what I said was that under section 162.....

**Shri Dharendra Nath Dutta :** Do not say that, I did not hear your speech and that I was busy with Mian Sahib at that time. I have heard your speech very carefully.

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** Thank you very much.

Now, I will explain to you. The point was that section 162 cannot be used by the accused person for his own benefit in this way that he cannot use his own statement made to the police. Will Mr. Dutta mark the words "that his own statement is not contemplated under section 162 at all". Section 162 stops all statements made to police and allows the use of statement made by a witness to police for the purpose of contradiction. Therefore the statement of an accused person made to police cannot be used by himself for the purpose of contradiction. He would remember that what I said was that if an accused person has given different statement before the police and then he subsequently gives a different statement before a court of Law, then the court of Law can look into that statement alone and the accused cannot use the statement that he has made before the police for the purpose of contradicting the confession that has been made before the Magistrate to show that that confession was a false one because he had given a different statement before the police. Now, under our new clause the accused can use his own statement also, and, therefore, it is not only for the benefit of the prosecution, it is for the benefit of the accused person also that his own confession can be contradicted by the statement that he made before the police. Therefore, I have stated the reasons before also, for these reasons as I have again said just now, I oppose the amendment.

**Mr. President :** The question is :

"That sub-clause (2) of clause 8 of the Bill be omitted."

The motion was negatived.

**Mr. President :** The question is :

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Clause 9 was added to the Bill.

**Shri Dharendra Nath Dutta :** Sir, I move :

"That in sub-clause (1) of clause 10 of the Bill, after the word 'Court' occurring in the third line, the following be inserted :—

'other than in the Appellate Tribunal appointed under sub-section (3) of this section';"

Mr. President, Sir, I think, all the amendments should be moved along with this amendment.

**Mr. President :** Yes, you can move.

**Shri Dharendra Nath Dutta :** Sir, I move :

"That in sub-clause (1) of clause 10 of the Bill, after the word 'Court' occurring in the fourth line, the words 'other than Appellate Tribunal' be inserted." and also, Sir,

"That after sub-clause (2) of clause 10 of the Bill, the following new sub-clause be added :—

'(3) the Central Government shall appoint by notification an Appellate Tribunal, composed of five persons, each of whom is a Judge of a High Court or the Federal Court and shall nominate one of the said persons to be the President of the said Appellate Tribunal. The members of the Appellate Tribunal shall be other than the persons composing the Special Tribunal. Any person convicted and sentenced by the Special Tribunal may prefer an appeal to the Appellate Tribunal within thirty days from the date of the order or judgment of the Special Tribunal'."

Sir, this clause deals with the power of appeal or revision. I propose, Sir, that really there should be an Appellate Tribunal composed of persons who will be appointed by the Central Government, will be Judges of the High Court, or Federal Court, other than the persons composing the Special Tribunal and persons convicted by the Special Tribunal may prefer an appeal. Of course, Sir, in this particular case, it has been said that there will be three Judges of the High Court or the Federal Court, who shall compose the Special Tribunal, and therefore there was no necessity of an appeal. But it may be a case in which the sentence of death may be involved. So, notwithstanding this Special Tribunal and this special procedure, there may be room for mistake. Therefore, there should be another Appellate Tribunal composed of five persons who will hear the appeal. So, I think an opportunity to prefer an appeal should be given. With these words, I move my amendments.

**Mr. President :** Amendment moved :

"That in sub-clause (1) of clause 10 of the Bill, after the word 'Court' occurring in the third line, the following be inserted :—

'other than in the Appellate Tribunal appointed under sub-section (3) of this section'."

"That in sub-clause (1) of clause 10 of the Bill, after the word 'Court' occurring in the fourth line, the words other than Appellate Tribunal" be inserted ;

"that after sub-clause (2) of clause 10 of the Bill, the following new sub-clause be added :—

'(3) the Central Government shall appoint by notification an Appellate Tribunal, composed of five persons, each of whom is a Judge of a High Court or the Federal Court and shall nominate one of the said persons to be the President of the said Appellate Tribunal. The members of the Appellate Tribunal shall be other than the persons composing the Special Tribunal. Any person convicted and sentenced by the Special Tribunal may prefer an appeal to the Appellate Tribunal within thirty days from the date of the order or judgment of the Special Tribunal'."

**Mian Muhammad Iftikharuddin :** Sir, I would like to submit that the reasons given by the Honourable Member for not having a second Tribunal are not convincing and I would like him to ponder over them again. I do not think there is any strong argument against having a second Tribunal because all that will happen is that a month or so more will be taken and that is a small matter. The secrets will not go out because



[Mian Muhammed Iftikharuddin]

the second Tribunal will also be composed of responsible persons. If three Judges can share an important State secret, surely five more Judges of the same status and integrity could share it without any harm to the State.

In this connection, I must remind the Minister in charge of the Bill who has been harping on the lacuna and saying that we have not pointed out any flaw in this Bill. ....

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** I must submit that the Honourable Member is only making an excuse of replying to points that have already been decided. I was hearing with patience when he was referring to official secrets, which was not relevant at all. I have at no time said that it is because of letting out secrets that I do not want an Appellate Tribunal and yet he has used that argument and now he wants to open another point. Let him confine himself to the point whether there should be an appeal or not.

**Mian Muhammad Iftikharuddin :** Sir, it was out of mere courtesy that I gave way to the Member. I hope he will also show that courtesy towards me. I was to the point when I was interrupted. The only argument that could be advanced against this Appellate Tribunal was that it will delay the proceedings and that secrets will not be kept. If these two things are not apprehended, the argument that I advanced in the morning in favour of having a second Tribunal, *viz.*, that it will give a chance to both sides to bring out any flaws that there might have been in the first judgment, holds good. After a judgment is written new points come to light and if there are only flaws they can be remedied provided the right of appeal is there. This will also make people feel that full justice has been done. As regards the Honourable Minister's charge that we have not pointed out any lacuna in the Bill, I submit we have. Whilst fully agreeing with the policy underlying this Bill, I submit that the flaw lies in the fact that the normal course of justice has not been followed. The normal course would have helped the security of the State even more. That is the point which the Honourable Minister in charge of the Bill has forgotten. As a matter of fact, the whole misunderstanding arose—if you will pardon my saying so—because the member from the other side of the House. ....

**Mr. President :** Are you speaking on the amendments ?

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** He is talking generally.

**Mr. President :** Please confine yourself to the amendments which are now before the House.

**Mian Muhammad Iftikharuddin :** The complication arose from a misunderstanding. ....

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** Sir, no member from this side of the House has spoken on these amendments. Therefore, he cannot refer to a speech of a member on this side unless he is saying something which has already been said.

**Mian Muhammad Iftikharuddin :** I was referring to a remark of an Honourable Member from the other side.

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** I have fully explained the reasons about the provision contained in the Bill. I have given the reasons that the highest Tribunal is deciding the case,

which is both the original Court as well as the Appellate Court. It is because of that and not because of the secrets, as Mian Sahib seems to think, that I have maintained that it is not necessary to have an Appellate Tribunal. You have got the highest Judges on this Tribunal and therefore there is no necessity to make a separate provision for appeal.

**Mr. President :** The question is :

"That in sub-clause (1) of clause 10 of the Bill, after the word 'Court' occurring in the third line, the following be inserted :—

'other than in the Appellate Tribunal appointed under sub-section (3) of this section'."

The motion was negatived.

**Shri Dharendra Nath Dutta :** Sir, the other amendments now fall through and need not be put.

The other amendments, with the leave of the House, were not put.

**Mr. President :** The question is :

"That clause 10 stand part of the Bill."

The motion was adopted.

Clause 10 was added to the Bill.

Clause 11 was added to the Bill.

**Shri Dharendra Nath Dutta :** Sir, I move :

"That in clause 12 of the Bill, for the words 'Special Tribunal' occurring in the third line, the words 'the accused' be substituted."

Clause 12 says :

"The Special Tribunal may, at any stage of the case, direct that an advocate, to be selected by the Special Tribunal shall be engaged . . . . ."

My submission is that the advocate should be selected by the accused. My Leader in his opening speech while opposing the motion has already said that there is a great difference between an advocate selected by the Government or by a Special Tribunal and an advocate selected by the accused. If the accused is to be defended by an advocate, he should be a person of his own choice. Therefore, for the words 'Special Tribunal' I want to substitute the word 'accused'. With these words I move my amendment.

**Mr. President :** Amendment moved :

"That in clause 12 of the Bill, for the words 'Special Tribunal' occurring in the third line, the words 'the accused' be substituted."

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** Sir, again a misunderstanding is being created. It is not the question of accused being allowed to make choice of his counsel. Certainly he is at liberty to choose any counsel that he likes. He is free to do so. The Court only comes in

6 p. m. case he does not engage a counsel or does not produce anybody to defend himself in the Court. Therefore it need not be said that the accused should be given a choice. He is at liberty to do so and inclined to engage a counsel and then unless something like that is done because an accused due to certain reasons may not want to engage anybody, may not want the trial to proceed, he himself may not appear inclined to engage a Counsel and then unless something like that is done the trial will be at a standstill. Therefore, it is the Court—the Special Tribunal—which will be selecting the counsel to appear for the accused and this is the normal procedure which is being followed at present. It is the Sessions Court—the trial court—which selects the proper counsel for an accused person if he has failed to engage his own counsel.

**Shri Sris Chandra Chattopadhyaya :** You mean *amicus curie*.

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** He is called a pauper counsel, because when an accused person fails to engage a counsel in a murder case then it is the duty of the Court to engage a counsel on his behalf and have him defended. The same principle is being applied here : that if he fails to engage a counsel and goes unrepresented, then the Court at the expenditure of the Central Government will select a counsel and engage for him. So the normal procedure is being followed and Mr. Dharendra Nath Dutta should not give the accused person more benefit than has been allowed to him under the Criminal Procedure Code.

**Mr. President :** The question is :

"That in clause 12 of the Bill, for the words 'Special Tribunal' occurring in the third line, the words 'the accused' be substituted."

The motion was negatived.

**Mr. President :** The question is :

"That clause 12 stand part of the Bill."

The motion was adopted.

Clause 12 was added to the Bill.

Clause 1 was added to the Bill.

**Mr. President :** There is one amendment to the Title and the Preamble, Dr. Mahmud Husain.

**The Honourable Dr. Mahmud Husain :** Sir, I beg to move :

"That to the Long Title and the Preamble of the Bill, after the word 'Case' the words 'and other matters connected therewith' be added."

**Mr. President :** Amendment moved :

"That to the Long Title and the Preamble of the Bill, after the word 'Case' the words 'and other matters connected therewith' be added."

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** I accept the amendment.

**Mr. President :** The question is :

"That to the Long Title and the Preamble of the Bill, after the word 'Case' the words 'and other matters connected therewith' be added."

The motion was adopted.

**Mr. President :** The question is :

"That the Long Title and the Preamble, as amended, stand part of the Bill."

The motion was adopted.

The Long Title and the Preamble, as amended, were added to the Bill.

**The Honourable Pirzada Abdus Sattar Abdur Rahman :** Sir, I beg to move :

"That the Bill, as amended, be passed."

**Mr. President :** Motion moved :

"That the Bill, as amended, be passed."

The motion was adopted.

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**Mr. President :** The House stands adjourned *sine die*.

The Assembly then adjourned *sine die*.